# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 123

THE TRADERS' NATIONAL BANK OF CHICAGO, APPELLANT,

vs.

GEORGE W. CAMPBELL, ASSIGNEE OF CHARLES HITCHCOCK AND EDWARD M. ENDICOTT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 5, 1871.

# SUPREME COURT OF THE UNITED STATES.

## No. 322.

THE TRADERS' NATIONAL BANK OF CHICAGO, APPELLANT,

vs.

GEORGE W. CAMPBELL, ASSIGNEE OF CHARLES HITCHCOCK AND EDWARD M. ENDICOTT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding judge of said circuit court, on Friday, the fifteenth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fifth year.

WILLIAM H. BRADLEY, *Clerk.*

GEORGE W. CAMPBELL, ASSIGNEE, &C., OF Charles Hitchcock and Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } 9431.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the day of in the year of our Lord one thousand eight hundred and there was filed
2 in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a transcript of a record from the district court of the United States for the northern district of Illinois, which said transcript is in the words and figures following, to wit:

3 *Transcript from district court.*

Pleas in the district court of the United States for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of said court, on Saturday, the twenty-sixth day of March, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fourth year.

WILLIAM H. BRADLEY, *Clerk.*

4 GEORGE W. CAMPBELL, ASSIGNEE OF Hitchcock and Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } 2302.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-seven, came George W. Campbell, assignee, &c., complainant, by Fuller & Shepard, his solicitors, and filed in the office of the clerk of the district court of the United States for the northern district of Illinois, at Chicago, in said district, his bill of complaint against The Traders' National Bank of Chicago, and Hotchkiss Sons, defendants, and also at the same time filed his præcipe for a writ of subpœna against said defendants in said entitled cause, which said præcipe and bill are respectively in the words and figures following, to wit:

5 *Præcipe for subpœna.*

United States district court, northern dist. of Illinois.—In bankruptcy.

GEORGE W. CAMPBELL, ASSIGNEE OF THE ESTATE & effects of Charles Hitchcock & Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO, and Hotchkiss Sons.

Please issue summons as above on equity side of the court (district) sitting as a court of bankruptcy.

FULLER & SHEPARD,
*Compl't's Sol'rs.*

(Endorsed:) Filed Nov. 21, 1867. W'm H. Bradley, cl'k.

6 *Bill of Complaint.*

UNITED STATES OF AMERICA,
*Nor. Dist. of Illinois, ss:*

In the United States district court within & for the northern district of Illinois.

To the honorable the judge of said court, sitting as a court of bankruptcy, & on the equity side thereof:

Your orator, George W. Campbell, assignee of the estate & effects of Charles Hitchcock & Edward M. Endicott, constituting the former firm of Hitchcock & Endicott, bankrupts according to the statute, &c., respectfully shows unto your honor that said Charles Hitchcock & Edward M. Endicott were, on the petition of H. C. Doane & Co., creditors of said Hitchcock & Endicott, filed on the afternoon of the 25th day of June, A. D. 1867, on the 10th day of July, 1867, upon the proceeding under & by virtue of the statute of the United States in relation to bankruptcy, declared & adjudicated by this court to be bankrupts; & thereupon on the 29th day of July, 1867, a warrant in due form of law, returnable according to law before the register in bankruptcy within & for the first congressional district of Illinois, within which said Hitchcock & Endicott resided, duly issued & was delivered to the marshal of the United States, within & for the northern district of
7 Illinois, as messenger, to execute according to law, which was accordingly, so far as possible, by him done, but possession of the property hereinafter named, not obtained, for the reasons hereinafter stated.

And your orator further shows unto your honor that, on the 21st day of August, A. D. 1867, your orator was duly appointed & did thereafterwards, on the 26th day of said August, duly qualify as assignee of the estate & effects of said bankrupts as by the statute aforesaid, duly prescribed; that, on or about the 28th day of May, A. D. 1867, said Hitchcock & Endicott were the owners & in possession of a large stock of goods, consisting of brushes, dry goods, Yankee notions, of the value of thirty thousand dollars, or thereabouts, and were so the owners and possessors on the 29th of May, 1867.

That, on the 29th day of May, A. D. 1867, The Traders' National Bank

of Chicago obtained judgment against said Charles Hitchcock & Edward M. Endicott, in the circuit court of Cook County, in the State of Illinois, being within the district aforesaid, by confession, for the sum of $6,432 23 upon a certain note for the sum of $6,707 43, bearing date the 28th day of May, 1867, and payable upon demand, and signed by said Edward M. Endicott "Hitchcock and Endicott" for said firm.

8 And your orator further shows that demand for the payment of said note was not made on said Hitchcock & Endicott until the 29th day of May, 1867, and in taking said pretended judgment proof was made and still appears on file in the papers of said cause in said Cook County circuit court, that demand was made thereon on that day, and to which record your orator refers, and said note did not become due until on said 29th of May, 1867. That, on said 29th day of May, 1867, said Traders' National Bank of Chicago commenced their said suit, in which said pretended judgment was obtained as aforesaid by filing a declaration therein upon the note aforesaid, and thereupon, without service of process upon said Hitchcock & Endicott, or either of them, either actually or constructively, or any notice actual or constructive to them or either of them of the pendency of said suit, caused the appearance of said Hitchcock & Endicott, and of both of them to be entered by Junius Mulvey, as their attorney, and judgment to be by said attorney purporting to act for said Hitchcock & Endicott, confessed in favor of said Traders' National Bank for the amount hereinbefore mentioned, to wit, $6,432 23 upon and by virtue of a certain warrant of attorney by said Charles Hitchcock and Edward M. Endicott, signed and attached to the note aforesaid, authorizing and purporting to authorize

9 one E. G. Mason who was a member of the firm of Mattocks & Mason, attorneys for said bank, or any attorney of any court of record as their attorney at any time after the said note became due to enter the appearance of said Hitchcock & Endicott in any suit commenced upon said note and waive service of process and confess judgment for the amount thereof, and the usual attorneys' fees, and prior to taking said judgment, said Trader's National Bank made proof of the execution of said note & of the demand so made as aforesaid for the payment thereof, on the 29th day of May, 1867; and on said 29th day May, 1867, having commenced suit against said Hitchcock & Endicott, the appearance of the latter and each of them was entered under said warrant of attorney, service of process waived and judgment confessed as aforesaid, for $6,432 23, being the amount of said note less $325 20, endorsed as received thereon, together with fifty dollars, att'ys fees. And thereupon said Traders' National Bank caused execution to be issued on said last-mentioned judgment and placed in the hands of the sheriff of Cook County, to execute, and said sheriff levied the same upon the stock of goods of said Hitchcock & Endicott aforesaid, to wit, on the said 29th day May, A. D. 1867, and took possession of said goods, to wit, at said district aforesaid.

10 Your orator further shows unto your honor that, on the 30th day of May, A. D. 1867, Hotchkiss Sons, of the State of Connecticut, recovered judgment in that name by confession against said Charles Hitchcock and Edward M. Endicott, in the circuit court of Cook County, in the district aforesaid, for the sum of thirteen hundred and seventy-nine dollars and costs of suit, upon a certain promissory note for the sum of thirteen hundred & forty $\frac{11}{100}$ dollars, bearing date the 5th day of March, A. D. 1867, signed by Charles Hitchcock and Edward M. Endicott, and payable on demand to the order of said Hotchkiss Sons, with interest at the rate of seven per centum per annum.

That, on said 30th day of May, A. D. 1867, said Hotchkiss Sons, by that name, commenced suit against said Hitchcock & Endicott upon the note aforesaid, by filing their declaration thereon in said Cook County circuit court, but, as your orator believes, made no demand upon said note other than by the commencement of said suit, and thereupon, without service of process upon said Hitchcock & Endicott, or either of them, in said suit, either actually or constructively, or any notice, actual or constructive, to them, or either of them, of the pendency of said suit, caused the appearance of said Hitchcock and said Endicott to be entered in said suit, and service of process therein waived by R. S. Wilson, as their attorney, which said Wilson was also a member of the firm of Asay & Wilson, the att'ys for said Hotchkiss Sons, and judgment to be by said attorney purporting to act for
11 said Hitchcock & Endicott, confessed in said court in favor of said Hotchkiss Sons and against said Hitchcock and said Endicott, for the sum of thirteen hundred and seventy-nine dollars and costs of suit, upon and by virtue of a certain warrant of attorney, bearing date the said 5th day of March, A. D. 1867, and attached to the note aforesaid, and constituting said R. S. Wilson, or any attorney of any court of record, their attorney for them, and in their name, place, & stead, to appear before any court of record, waive service of process, and confess judgment in favor of said Hotchkiss Sons, for such amount as might be due upon said note, together with interest, costs, & attorneys' fees, at any time after maturity of said note.

And thereupon the said Hotchkiss Sons caused execution to be issued upon the judgment so confessed and obtained aforesaid, and delivered to the sheriff of Cook County to execute, who thereupon levied the same upon the aforesaid goods of said Hitchcock & Endicott, already in his possession by virtue of the levy of the above-mentioned execution in favor of said Traders' National Bank.

And your orator hereunto annexes copies of said notes in favor of said Traders' National Bank, marked "A," and of said Hotchkiss Sons, marked "B," with the power of attorney thereto attached, respectively, which he prays may be taken as a part hereof.

12 Your orator further shows unto your honor that, on the 25th of June, A. D. 1867, a petition was filed against said Hitchcock & Endicott, to cause them to be declared bankrupt by and in behalf of H. C. Doane & Co., a firm doing business in Boston, Massachusetts, and to whom said Hitchcock & Endicott were in a large sum indebted, in this court, according to the statute in such case made and provided, and on the 26th day of June, 1867, an order was granted upon the petition of said Doane & Co. upon the sheriff of Cook County, and which was duly served upon him, restraining him from selling the said goods of said Hitchcock & Endicott, which he was proceeding to do upon the executions aforesaid.

That, on the 10th day of July, A. D. 1867, said Hitchcock & Endicott were duly, in proceeding instituted by said Doane & Co. as aforesaid, adjudicated bankrupts, and a warrant in due form of law thereupon, or about said 10th day of July, 1867, was issued and delivered to the marshal of the United States for the northern district of Illinois, as messenger, to execute, which warrant, commanded said marshal as messenger, among other things to take possession of the goods, chattels, and property of said Hitchcock & Endicott, which warrant was duly returnable at a day therein mentioned, and upon the 11th day of July, 1867, an order was entered in the same proceeding, that the said mar-

shal, as messenger, sell the goods of said Hitchcock & Endicott
13 at public or private sale, in parcels or otherwise as might be most advantageous.

And on or about the said 11th day of July, 1867, said Marshal, as messenger, demanded possession of the said goods of said Hitchcock & Endicott of the sheriff of Cook County, which the latter, under instructions from, and by the direction of said Traders' National Bank, with the acquiescence and assent of Hotchkiss Sons, refused to deliver up and surrender to him, said messenger.

Your orator further shows unto your honor that, on or about the 21st day of August, 1867, notwithstanding the order of this court to the contrary, said sheriff proceeded to sell, and did sell, the said stock of goods of said Hitchcock & Endicott, of great value, to wit: of the value of about thirty thousand dollars, upon the executions so issued as aforesaid; and that said sheriff did so proceed to, & did sell, said stock of goods at the particular direction and request of the said Traders' National Bank, which insisted that said sale should go forward and be made, notwithstanding the notice to said Traders' National Bank of the order of the court to the contrary.

And said Hotchkiss Sons also had notice of said order, but acquiesced in the making said sale by said sheriff.

Your orator further shows unto your honors, upon the record thereof in said court remaining, that the said pretended judgment in
14 favor of said Traders' National Bank, so rendered by the said circuit court of Cook County, against said Hitchcock & Endicott as aforesaid, was improvidently and unauthorizedly so rendered by said Cook County circuit court, which said court had no jurisdiction over said Charles Hitchcock and Edward M. Endicott at the time of the rendition thereof; and said judgment was and is, and the execution issued thereon was & is, and all proceedings taken thereunder were and are absolutely, void and of no effect.

Your orator further shows unto your honor, upon information and belief, that the said pretended judgment in favor of said Hotchkiss Sons, so rendered by said circuit court of Cook County against said Hitchcock & Endicott, as aforesaid, was improvidently and unauthorizedly so rendered by said circuit court, which said court had no jurisdiction over said Charles Hitchcock & Edward M. Endicott at the time of the rendition thereof; and said judgment was and is, and the execution issued thereon was and is, and all proceedings taken thereunder were and are absolutely void and of no effect.

And your orator further shows unto your honor that the said pretended judgment in favor of said Traders' National Bank, and the execution issued thereon, and proceedings taken thereunder was, were, and are absolutely void under the statute of the United States in relation to bankrupts and bankruptcy, commonly called the bankrupt law,
15 approved March 2nd, 1867, being in fraud of the provisions thereof; because, as your orator further shows unto your honor, upon information and belief, the said Charles Hitchcock & Edward M. Endicott being insolvent and in contemplation of insolvency, within four months before the filing of the petition hereinbefore mentioned against said Hitchcock & Endicott, with a view to give a preference to said Traders' National Bank, procured the said stock of goods of them, said Hitchcock & Endicott, to be seized on execution, the said Traders' National Bank, the person to be benefitted by such seizure, having reasonable cause to believe said Hitchcock & Endicott to be

insolvent, and that such seizure was made in fraud of the provisions of said act, and because said Hitchcock & Endicott, within six months before the filing of the above-mentioned petition against them, disposed of their said property by means of its seizure upon execution, so that the proceeds thereof might come to said Traders' National Bank, who then had reasonable cause to believe them to be insolvent; and that such disposition by seizure was made with a view to prevent their said property from coming to their assignee in bankruptcy, and from being distributed under said act, and because said Hitchcock & Endicott, within six months of the filing of said petition, in contemplation of bankruptcy or insolvency, gave a warrant to confess judgment to said Traders' National Bank, and being insolvent, or in contemplation
16 of insolvency, procured and suffered, or procured or suffered their property to be taken on legal process, with intent to give a preference to said Traders' National Bank, which said Traders' National Bank had reasonable cause to believe that a fraud on said act was intended, and knew that said Hitchcock & Endicott were insolvent. And your orator charges that the said Hitchcock & Endicott executed the promissory note on which said pretended judgment was rendered as aforesaid, and the warrant of attorney upon which said judgment was confessed, and caused thereby the issuance of execution thereon in order to give a preference to said Traders' National Bank, and in fraud of the provisions of the bankrupt law; and said Traders' National Bank, at the time it received the note and warrant aforesaid, and obtained the confession of judgment & issuance of the execution aforesaid, well knew said Hitchcock & Endicott were insolvent, and that said note, warrant, judgment, and execution were given, made, confessed & issued in fraud of the provisions of said bankrupt law, and in contemplation of bankruptcy, as was the fact; and said Traders' National Bank, and said Hitchcock & Endicott fraudulently combined to procure the said seizure of said stock of goods, which was the principal property of said Hitchcock and Endicott, and to evade the provisions of said bankrupt law. That the indebtedness for which said note purported to be given had not, at the time of its execution, & of the entry
17 of said pretended judgment matured, and was not, as your orator believes, so large as the amount named in said note.

That the proceedings culminating in said judgment & execution were collusively conducted by said Edward M. Endicott in particular, & by agreement & in conjunction with one Endicott, his brother, a director of said Traders' National Bank.

And your orator further shows unto your honor that said pretended judgment in favor of said Hotchkiss Sons, and the execution issued thereon, and proceeding taken thereunder was, were, and are, void under the statute of the United States in relation to bankrupts and bankruptcy, being in fraud of the provisions thereof, because, as your orator further shows unto your honor, upon information and belief, said Charles Hitchcock and Edward M. Endicott, being insolvent, and in contemplation of insolvency within four months before the filing of the petition hereinbefore mentioned against said Hitchcock & Endicott, with a view to give a preference to said Hotchkiss Sons, procured the said stock of goods of them, said Hitchcock & Endicott, to be seized on execution, the said Hotchkiss Sons the persons to be benefitted by such seizure, having reasonable cause to believe said Hitchcock & Endicott to be insolvent, and that such seizure was made in fraud of the provisions of said act, and also because said Hitchcock & Endicott,

18 within six months before the filing of the aforementioned petition against them, & disposed of their said property by means of its seizure upon execution, so that the proceeds thereof might come to said Hotchkiss Sons, who then had reasonable cause to believe them to be insolvent; and that such disposition by seizure was made with a view to prevent their said property from coming to their assignee in bankruptcy, and from being distributed under said act. And also because said Hitchcock & Endicott, in contemplation of bankruptcy, gave a warrant of attorney to confess judgment to said Hotchkiss Sons, and procured and suffered their property to be taken on legal process, with intent to give a preference to said Hotchkiss Sons, who had reasonable cause to believe that a fraud on said act was intended, and knew that said Hitchcock & Endicott were insolvent, and the aforementioned petition was filed against them, said Hitchcock & Endicott, within six months thereafter, that is to say, the said note & warrant of attorney so given to said Hotchkiss Sons by said Hitchcock & Endicott, as aforesaid, and the judgment obtained thereon, and execution thereon issued, were all of them given & executed, done, rendered, & issued for the fraudulent purposes aforesaid, and in fraud of the bankrupt law, as aforesaid, with the knowledge and by collusion with said Hotchkiss Sons, and with intent to give them, fraudulently, a preference
19 over other creditors, of them, said Hitchcock & Endicott, of which intent said Hotchkiss Sons had full knowledge.

Your orator further shows unto your honor that he did, on the 19th day of November, A. D. 1867, institute his action in a plea of trover in the United States circuit court within and for the district aforesaid, against the sheriff of Cook County, & his deputy, for the conversion of the stock of goods of said Hitchcock & Endicott, as aforesaid; but in addition thereto your orator is entitled, under and by virtue of the provisions of said bankrupt law, to sue & recover of all persons who were or are to be benefitted, or have been, by such fraudulent disposition of property and seizures as aforesaid, for the value of said goods & chattels so seized as aforesaid; and that said Traders' National Bank, and said Hotchkiss Sons are the persons to be benefitted by said fraudulent judgment, execution & seizures. And your orator can only prosecute his said remedy against them in equity.

Your orator further shows unto your honor that, upon the rendition of said pretended judgment in favor of said Traders' National Bank, said bank obtained and endorsed upon the note upon which said judgment was so pretended to be rendered, the sum of three hundred and twenty-five $\frac{20}{100}$ dollars, which said sum was so received & en-
20 dorsed, as your orator upon information and belief charges, in fraud of said statute of the United States upon the subject of bankruptcy, to wit, said bankrupt law.

That said Hitchcock & Endicott kept a deposit account with said Trader's National Bank before and at the time of the giving of the said promissory note to said bank as aforesaid, and said sum of three hundred and twenty-five $\frac{20}{100}$ dollars, or some other, was in the hands of said Traders' National Bank to the credit of said Hitchcock & Endicott on their account as aforesaid, and appropriated upon said note about the 28th day of May, A. D. 1867, without color of right, or upon the order thereto of said Hitchcock and Endicott, as a payment on said note, which was & is fraudulent and void under the provisions of the bankrupt law aforesaid, because made by said Hitchcock & Endicott in contemplation of bankruptcy, and when they were insolvent, with intent

to give a preference to said Traders' National Bank, which, when it received such payment, had reasonable cause to believe that a fraud on said bankrupt act was intended, and knew that said Hitchcock & Endicott were insolvent. And your orator shows that the petition for adjudication of bankruptcy was filed against said Hitchcock and Ed-
21 dicott within six months after such payment.

And your orator further shows that he is entitled to recover of and from said Traders' National Bank the said payment so fraudulently made as aforesaid.

Your orator further shows unto your honor that on & before said 29th day of May, A. D. 1867, said Traders' National Bank had in its possession, and under its control, certain bills of exchange, checks, notes, and other evidences of indebtedness, belonging to said Hitchcock & Endicott, to a large amount, but exactly what your orator cannot state, and prays to be informed; and upon which said Traders' National Bank have collected divers large sums of money, which of right belong & belongs to said Hitchcock & Endicott, or their assignees in bankruptcy, your orator, as do & did said bills of exchange, checks, notes, and evidences of indebtedness, and which came to the hands of said Traders' National Bank, and which has retained the same in fraud of said bankrupt law, and the same and the money realized thereon have been appropriated by said Traders' National Bank without color of right, or if by the order or direction of said Hitchcock & Endicott, then the same has been and was done in contemplation of bankruptcy, with the intent to give a preference to said Traders' National
22 Bank, and in fraud of the bankrupt law, which said bank was fully possessed of knowledge of such intent on the part of said Hitchcock & Endicott, and their condition of insolvency, and have reasonable cause to believe a fraud on said bankrupt law was intended; and your orator is entitled to recover of said Traders' National Bank the value of the said bills, notes, checks, & evidences of indebtedness aforesaid, and all moneys collected thereon as aforesaid.

Your orator shows unto your honor, upon the foregoing premises, that he is entitled to recover of said Traders' National Bank and said Hotchkiss Sons the value of the stock of goods of said Hitchcock & Endicott, so procured to be seized upon said executions as aforesaid, and if not jointly, then to the proportion from each which shall seem meet to the court and agreeable to equity and justice, and to have an account therefor.

And also your orator is entitled to recover of said Traders' National Bank the money and interest paid last by said Hitchcock & Endicott, or by it appropriated without color of right as aforesaid.

And also of said Traders' National Bank the amount of money collected upon the notes, checks, bills, and other evidences of indebtedness, and the value of such as are uncollected, or the return thereof.

23 And that your orator is entitled to an account against said bank for the ascertainment and statements of the said amounts at the proper decree therefor may be herein entered.

And your orator well hoped that said Traders' National Bank of Chicago, and said Hotchkiss Sons, would have paid to your orator the value of the said stock of goods of said Hitchcock & Endicott, so seized and sold as aforesaid, and that said Trader's National Bank would have paid to your orator the money so paid to them as aforesaid, and all the money collected on notes, bills, checks, and evidences of indebtedness, and delivered up the same or paid over to your orator the value thereof.

But now so it is, may it please your honor, that the said Traders' National Bank & Hotchkiss Sons neglect & refuse so to do, & in excuse thereof make a variety of unfounded pretenses which, with their actings and doings, are contrary to equity & good conscience, and tend to the manifest injury of your orator in the premises. In tender consideration whereof, & forasmuch as your orator is remediless in the premises, at and by the strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this sort are cognizable and relievable, and as your orator is furthermore entitled to this relief by proceedings in equity and in the bankrupt law aforesaid in this court.

24 To the end that the said defendants The Traders' National Bank of Chicago & Hotchkiss Sons may answer fully and singularly the premises, but not upon oath, (their oath to their said answers being hereby waived pursuant to the statute ;)

That the value of the said stock of goods of said Hitchcock and Endicott may be fully ascertained, and a decree entered against said Traders' National Bank and said Hotchkiss Sons for the payment to your orator of the same, an account being had and taken to ascertain the proportions which each of said defendants should pay if they are not found jointly liable therefor, & that the said def'ts, and each of them, be decreed to pay the same ;

That the said defendant, The Traders' National Bank of Chicago, be also ordered and decreed to pay to your orator the said money so paid it, as aforesaid, and also such money as has been by it collected on the notes, checks, bills, & evidences of indebtedness so coming to its possession as aforesaid, & the value of such as have not been so collected, and that an account be taken thereof, and such decree rendered accordingly;

And for such further & other relief as your orator's case may require, & as shall be agreeable to equity & good conscience ;

May it please your honor to grant unto your orator the writ of summons directed to said defendants The Traders' National

25 Bank of Chicago and Hotchkiss Sons, directing them at a certain time, and under a certain penalty to be therein written, to be and appear before this honorable court, then and there to answer the premises and stand to & abide by the order & decree of the court herein.

And as in duty bound will ever pray, &c.

GEORGE W. CAMPBELL,
*Assignee, &c.,*
By FULLER & SHEPARD,
*His Sol'rs.*

FULLER & SHEPARD,
*Comp't's Sol'rs & of Counsel.*

EXHIBIT "A."

$6,707 $\frac{73}{100}$. CHICAGO, ILL., *May* 28, 1867.

On demand we promise to pay to the order of Traders' National Bank of Chicago, six thousand seven hundred & seven $\frac{43}{100}$ dollars with interest; value received after maturity at 10 % per annum.

HITCHCOCK & ENDICOTT.

Know all men by these presents that we, the subscribers, are justly indebted to Traders' National Bank of Chicago upon a certain
26 promissory note bearing even date herewith, for the sum of six thousand seven hundred & seven $\frac{43}{100}$ dollars, with interest at ten per cent. per annum after maturity, and due on demand.

We, therefore, in consideration of the premises, we do hereby make, constitute, and appoint E. G. Mason, or any attorney of any court of record, to be our true and lawful attorney, irrevocably for us, and in our name, place, and stead, to appear before any court of record, in term-time or vacation, in any of the States or Territories of the United States, at any time after said notes become due, to waive the service of process, and confess a judgment in favor of the said Traders' National Bank, or their assigns, or assignees, upon the said note for the above sum, or for as much as appears to be due, according to the tenor and effect of said note, and interest thereon to the day of the entry of said judgment, together with costs, and fifty dollars attorneys' fees, and also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judg-
27 ment, or issuing the execution thereon, and also to waive all benefit of or advantage to which we may be entitled by virtue of any homestead, stay, or other exemption law, now or hereafter in force in this, or any State or Territory, where judgment may be entered by virtue hereof; hereby ratifying and confirming all that our said attorney may do by virtue hereof.

Witness our hands and seals this twenty-eighth day of May, A. D. 1867.

CHARLES HITCHCOCK. [SEAL.]
EDWARD M. ENDICOTT. [SEAL.]

In presence of—
ORSON SMITH.

[40 cents.—Int. rev.]

EXHIBIT "B."

"B."

$1,340 11. CHICAGO, *March 5th*, 1867.

On demand, for value received, we promise to pay to the order of Hotchkiss Sons, the sum of thirteen hundred & forty $\frac{11}{100}$ dollars, with interest at the rate of seven per cent.

CHARLES HITCHCOCK.
EDWARD M. ENDICOTT.

[75 cts. int. rev.]

28 Know all men by these presents that, whereas we, the subscribers, are now justly indebted to Hotchkiss Sons, upon a certain promissory note bearing even date herewith, for the sum of thirteen hundred and forty dollars and eleven cents, made payable to the order of the said Hotchkiss Sons, and due on demand, and may from time to time hereafter become further or otherwise justly indebted to said Hotchkiss Sons upon bonds, promissory notes, due-bills, and other written evidences of

debt, made or to be made, endorsed, or accepted by us, and held or owned by the said Hotchkiss Sons, assignee, or assigne's thereof.

Now, therefore, in consideration of the premises, and of the sum of one dollar to us paid by the said Hotchkiss Sons, the receipt whereof is hereby acknowledged, we do hereby make, constitute and appoint R. S. Wilson, or any attorney of any court of record, to be our true and lawful attorney, irrevocable, for us, and in our name, place, and stead, to appear in and before any court of record, either in term-time or vacation, in any of the States or Territories of the United States, at any time after the maturity of said note, or of any such bond, promissory note, due-bill, or other written evidence of debt, so already made or to be made, endorsed, or accepted by us as aforesaid, respectively, to waive service of process, and confess a judgment in favor of the Hotchkiss Sons, executors, administrators, assignee, or assignees, or the
29 legal holder or holders of said note, or of any one or more of such bonds, promissory notes, due-bills, or other written evidences of debt as aforesaid, for so much money as shall by the same appear to be due or owing thereon with interest thereon, according to the tenor and effect thereof respectively, together with costs; also for twenty dollars attorneys' fees to be added to the amount due or owing on entering up judgment; also to file a cognovit for the amount that may be so due or owing, including attorneys' fees as aforesaid, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered up by virtue hereof, nor any bill in equity filed to restrain or in any manner interfere with the operation of said judgment, or any execution issued or to be issued thereon, and to release all errors that may intervene in the entering up of any such judgment, or issuing any execution thereon, and to consent, stipulate, and agree, that any execution issued or to be issued upon such judgment may be immediately levied upon and satisfied out of any personal property which we may have or own, and to waive and relinquish all our right to have our personal property last taken and levied upon to satisfy such execution, and also to consent that any execution may issue upon any such judgment immediately; hereby ratifying and confirming all that our said attorney may do
30 by virtue hereof; and in consideration of the premises we do hereby stipulate, covenant, and agree with the said Hotchkiss Sons, executors, administrators, and with the assignee, assignees, or the legal holder or holders of said note, or of any one or more of such bonds, promissory notes, due-bills, or other written evidences of debt as aforesaid, that any execution so issued, or to be issued as aforesaid, may first be levied upon and satisfied out of any personal property which we may have or own, hereby expressly waiving all right to have our personal property last taken and levied upon to satisfy such execution.

Witness our hands and seals this fifth day of March, A. D. 1867.

(Signed) CHARLES HITCHCOCK. [SEAL.]
EDWARD M. ENDICOTT. [SEAL.]

[50 cts. int. rev.]

(Endorsed:) Filed Nov. 21, 1867. W'm H. Bradley, clerk.

On the same day, to wit, the twenty-first day of November, A. D. 1867, a writ of subpœna issued out of said clerk's office against said defendants in said entitled cause, which said writ, together with the return of the marshal thereon, is in the words and figures follow-
31 ing, to wit:

*Subpœna.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

The United States of America to Traders' National Bank of Chicago and Hotchkiss Sons, greeting:

We command you and every of you that you appear before our judge of our district court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of January next, to answer the bill of complaint of George W. Campbell, assignee of the estate and effects of Charles Hitchcock and Edward M. Endicott, bankrupts, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Thomas Drummond, judge of the district court of the United States of America, at Chicago aforesaid, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

[SEAL.] W'M H. BRADLEY, *Clerk.*

32 *Memorandum.*

The above-named defendants are notified that, unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

W'M H. BRADLEY, *Clerk.*

I have served the subpœna, hereto attached, upon the Traders' National Bank, one of the defendants therein named, by leaving a true copy thereof with J. O. Rutter, the president of said bank, residing at Chicago, in my district, as the president of said Traders' National Bank, on the 9th day of December, A. D. 1867. Hotchkiss Sons, who are named in said subpœna as defendants, I did not serve, as I was unable to find them in my district.

Dated December 11th, 1867.

J. R. JONES, *U. S. Marshal,*
By S. H. TOURTELLOTTE,
*Special Deputy.*

33 S. H. Tourtellotte, being first duly sworn, deposes and says that he served the writ, hereto attached, as stated in the foregoing return.

S. H. TOURTELLOTTE.

Subscribed and sworn to before me this 11th day of December, A. D. 1867.

P. A. HOYNE, *U. S. Com'r.*

(Endorsed:) Filed Jan'y 8th, A. D. 1868. W'm H. Bradley, cl'k.

On this day, to wit, the 14th day of December, A. D. 1867, came said defendant, the Traders' National Bank, of Chicago, by its solicitors, and filed in said clerk's office its appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

*Appearance of the bank.*

In the United States district court, northern dist. of Ill's.

GEORGE W. CAMPBELL, ASSIGNEE OF THE ESTATE & effects of Charles Hitchcock & Edward M. Endicott, copartners, &c.,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO, & Hotchkiss Sons.
} In chancery.

34 And now comes the said Traders' National Bank of Chicago, impleaded, &c., and enters its appearance in the above-entitled cause.

The Traders' National Bank of Chicago.
By BLODGETT & WINSTON, *its Sol'rs.*

CHICAGO, *Dec.* 13*th*, 1867.

(Endorsed:) Filed Dec. 14th, 1867. W'm H. Bradley, cl'k.

On this day, to wit, the 6th day of January A. D. 1868, came said Traders' National Bank, of Chicago, by its solicitors, and filed in said clerk's office its plea in said entitled cause, which said plea is in the words and figures following, to wit:

*Plea.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

In the United States district court within and for the northern district of Illinois, of the December term, A. D. 1867.—In chancery.

TRADERS' NATIONAL BANK OF CHICAGO AND Hotchkiss Sons
*ats.*
GEORGE W. CAMPBELL, ASSIGNEE OF THE ESTATE and effects of Charles Hitchcock and Edward M. Endicott.
} In bankruptcy.

35 The plea of the Traders' National Bank of Chicago, one of the defendants to the bill of complaint—George W. Campbell, assignee, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged, for plea to the whole of said bill, or to so much and such part of the said bill as prays a discovery from this defendant, whether, &c., says that, before and at the time of the commencement of this suit, this defendant was, and ever

since has been, a corporation, doing business in the city of Chicago, in the county of Cook, and State of Illinois, and its officers all reside and do business in the northern district of Illinois, and have never resided out of said district. And this defendant further says that the said complainant did, at the commencement of this suit, and does now, reside in the city and district aforesaid, and that all the several causes of action or liabilities, if any in said bill alleged, did not accrue to the said complainant out of the said northern district of Illinois; and the said defendant became chargeable therewith, if at all, in the said State of Illinois, in the northern district of said State.

And for a further plea in this behalf this defendant says that
36 the judgment mentioned in said bill of complaint, as obtained by this defendant against the said Charles Hitchcock and Edward M. Endicott, was regularly obtained in the circuit court of Cook County—a court of competent jurisdiction, on the 29th day of May, A. D. 1867, and execution was duly issued thereon by the clerk of said court, and said execution was duly levied by the sheriff of Cook County on the goods and effects of the said Charles Hitchcock and Edward M. Endicott, and the said goods and chattels were, by said sheriff, duly advertised to be sold under said execution all before the time of filing the complainants' bill of complaint in this cause.

Therefore this defendant doth plead the same, as above stated, to the said complainants' bill, and prays judgment of this honorable court whether this defendant should be compelled to make any further answer to the said bill; and prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

BLODGETT & WINSTON,
MATTOCKS & MASON,
*Solicitors for Traders' National Bank, Def't.*

BLODGETT & WINSTON,
*Of Counsel.*

(Endorsed:) Filed Jan'y 6, 1868, by leave of court. W'm H. Bradley, cl'k.

37 On this day, to wit, the 21st day of February, A. D. 1868, in the December term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

GEORGE W. CAMPBELL, ASSIGNEE OF CHARLES Hitchcock, and Edward M. Endicott,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO, AND Hotchkiss Sons.
} In chancery.

Now come the parties, by their solicitors, and comes on to be heard the demurrer of the complainant to the defendants' plea to the jurisdiction filed herein, and after hearing the argument of counsel, the court sustains said demurrer, to which ruling of the court the defendants, by their attorney, excepts, and on motion of the complainant's solicitors, the defendants are ruled to file their answer herein within ten days.

38 *Answer of bank.*

UNITED STATES OF AMERICA,
*Northern District of Illinois:*

In the United States district court within and for the northern district of Illinois.—In chancery.

The separate answer of The Traders' National Bank, one of the defendants to the bill of complaint of George W. Campbell, assignee of the estate and effects of Charles Hitchcock and Edward M. Endicott, by Joseph O. Rutter, as president of said bank.

This defendant, now and at all times hereinafter, reserving all manner of benefit and advantage to itself of exception to the many errors and insufficiencies in said bill contained, for answer thereto, or to so much or such parts thereof as this defendant is advised is material for it to make answer unto, answering says:

This defendant admits that said Charles Hitchcock and Edward M. Endicott were, in the petition of H. C. Doane & Co., (filed on the 25th day of June, A. D. 1867,) on the 10th day of July, A. D. 1867, upon the proceedings had before the district court of the United States, in & for the northern district of Illinois, in bankruptcy, declared and adjudicated by said court to be bankrupt, but this defendant denies
39 that said proceedings so had as aforesaid, were regular, or were in pursuance of law or of the statutes of the United States in relation to bankruptcy, as stated in said bill of complaint; and this defendant admits that on the 29th day of July, A. D. 1867, a warrant was issued returnable before the register in bankruptcy within and for the first congressional district of Illinois, and was delivered to the marshal of the United States, within and for the northern district of Illinois, as messenger, to execute; but the defendant denies that said warrant was in due form of law, or that the same was regularly issued in accordance with said statute regulating proceedings in bankruptcy, or that any action according to law was taken by said messenger, as aforesaid.

This defendant admits that, on or about the 21st day of August, A. D. 1867, the said complainant was appointed, and did thereafterwards, on or about the 26th day of August aforesaid, qualify as assignee of the estate and effects of said Hitchcock and Endicott, bankrupts, but denies that said complainant was duly or regularly appointed as such assignee, or that he regularly and duly qualified as by the statute aforesaid duly provided.

This defendant admits that, or or about the 28th day of May, A. D. 1867, said Hitchcock and Endicott were the owners of and in
40 possession of a large stock of goods, consisting of brushes, dry goods, and Yankee notions of value, (but of what value this defendant is unable to state,) and the said Hitchcock and Endicott were so possessed of the same on the 29th day of May, A. D. 1867.

This defendant admits that, on the 29th day of May, A. D. 1867, this defendant obtained judgment against Charles Hitchcock and Edward M. Endicott, in the circuit court of Cook County, in the State of Illinois, (the same being within the district aforesaid,) by confession, for the sum of six thousand four hundred and thirty-two and $\frac{23}{100}$, (6,432 $\frac{23}{100}$) dollars, upon a certain note given for the sum of six thousand seven hundred and seven and $\frac{43}{100}$ (6,707 $\frac{43}{100}$) dollars, bearing date the 28th day

of May, A. D. 1867, and which said note was drawn payable on demand signed by said firm of Hitchcock and Endicott, in the handwriting of the said Edward M. Endicott.

And this defendant admits that no demand was made on Hitchcock and Endicott for the payment of said note until the 29th day of May, A. D. 1868.

And this defendant doth state that said note was what is known and termed a judgment note, and herewith inserts a copy of the same, which is hereby made a part and portion of this defendant's answer to the said bill of complaint, and is given in the words, letters, and figures following, to wit:

41 "$6,707 43. CHICAGO, ILL, *May* 28, 1867.

"On demand we promise to pay to the order of Traders' National Bank of Chicago, six thousand seven hundred and seven and $\frac{43}{100}$ dollars, value received, with interest after maturity, at ten per cent. per annum.

"HITCHCOCK & ENDICOTT.

"Know all men by these presents that we, the subscribers, are justly indebted to Traders' National Bank of Chicago, upon a certain promissory note, bearing even date herewith, for the sum of six thousand seven hundred and seven and $\frac{43}{100}$ (6,707 $\frac{43}{100}$) dollars, with interest at ten per cent. per annum, and due on demand.

"Now, therefore, in consideration of the premises we do hereby make, constitute, and appoint E. G. Mason, or any attorney of any court of record, to be our true and lawful attorney, irrevocably, for us and in our name, place, and stead to appear in any court of record in term-time, or vacation, in any of the States or Territories of the United States, at any time after said note becomes due, to waive the service of process, and confess a judgment in favor of the said Traders' National Bank, or their assigns or assignees upon the said note and for the above sum, or for as much as appears to be due according to the tenor and effect of said note and interest thereon, to the day of the entry of said judgment, together with costs and fifty dollars attorneys' fees, and also to file a cognovit for the amount that may be so due, with an agreement there-
42 in that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up said judgment, or issuing the execution thereon; and also to waive all benefit of or advantage to which we may be entitled by virtue of any homestead, stay, or other exemption law now or hereafter in force in this or any State or Territory where judgment may be entered by virtue hereof, hereby ratifying and confirming all that our said attorney may do by virtue hereof.

"Witness our hands and seals this twenty-eighth day of May, A. D. 1867.

"CHARLES HITCHCOCK. [SEAL.]
"EDWARD M. ENDICOTT. [SEAL.]

"In presence of—
"ORSON SMITH."

Which said note was duly stamped according to law.

And this defendent states that said note, as aforesaid, was executed for said firm of Hitchcock & Endicott by the said Edward M. Endicott,

and the power of attorney thereto attached was executed by the said Charles Hitchcock and Edward M. Endicott, each individually.

And this defendant further states that, on the 29th day of May, A. D. 1867, there was endorsed to apply on said note in cash the sum
43 of three hundred and twenty-five dollars and twenty cents, ($325 20,) the same being the amount of cash monies in the hands of this defendant belonging to said Hitchcock and Endicott; and on the day last aforesaid this defendant made a demand on said Hitchcock and Endicott, at their place of business, for the payment of said note, and payment was then and there by them refused. And thereupon this defendant did *thereupon* cause their attorneys, Mattocks & Mason, to file in the office of the clerk of the circuit court of Cook County a narr. in their behalf for the amount due this defendant on said note; and one Junius Mulvey, an attorney of record in Chicago aforesaid did, under and by virtue of the power contained in the warrant of attorney annexed to said note, as such attorney, and in behalf of the said Hitchcock and Endicott, enter the appearance of said Charles Hitchcock and Edward M. Endicott, and did confess judgment in favor of this defendant against the said Charles Hitchcock and Edward M. Endicott, in due form of law, for the amount of said note, and fifty (50) dollars attorneys' fees, less the sum of three hundred and twenty-five and $\frac{20}{100}$ (325 20) dollars indorsed on said note as aforesaid, and judgment was thereupon regularly entered by the clerk of said circuit court of Cook County in favor of this defendant and against
44 the said Charles Hitchcock and Edward M. Endicott for the sum of six thousand four hundred and thirty-two and twenty-three hundredths (6,432 23) dollars; and immediately thereafter an execution was duly issued by the said clerk of the circuit court of Cook County, and was duly and on the same day placed in the hands of the sheriff of Cook County, and was on the same day by said sheriff duly levied on the goods and chattels of the said Charles Hitchcock and Edward M. Endicott subject to levy and sale.

And this defendant disclaims and denies any knowledge of the said judgment obtained by the firm of Hotchkiss Sons against the said Charles Hitchcock and Edward M. Endicott, except that it was informed that there was a judgment against the said Hitchcock and Endicott in favor of Hotchkiss Sons, and that execution was issued thereon, and that sale was made under said execution by the said sheriff of Cook County; but this defendant is unable to state the amount of said judgment, or the proceedings under which the same was obtained, or the proceedings had upon the judgment and execution; but this defendant does state that said last-mentioned judgment and execution were of a date subsequent to the judgment and execution of this defendant, and the same was not placed in the hands of said sheriff, and did not become a lien on the goods and chattels of said Hitchcock and Endicott until after the levy had been made
45 under and by virtue of the execution of this defendant before referred to.

And this defendant admits that, on or about the 25th day of June, A. D. 1867, a petition was filed against said Hitchcock and Endicott, to cause them to be declared bankrupts, by and in behalf of H. C. Doane & Co., a firm doing business in Boston, Massachusetts, and that said Hitchcock and Endicott were indebted to said firm of H. C. Doane & Co. in a large amount, and that said petition was filed in this court; but whether an order was granted by this court, as alleged in said bill, this defendant is unable to state.

And this defendant states that in all the proceedings had, if any there were under said last-mentioned petition, it, this defendant, was an entire stranger, never having been made a party to said proceedings, and having never appeared either to enforce or to contest the same.

And this defendant states that said proceedings were not carried on or conducted either by the direction or permission of this defendant; neither was any appearance of this defendant entered in said proceedings, nor was any opposition made to said proceedings, or to the orders emanating from this court, under or by virtue of said proceedings with or under the direction, knowledge, or permission of this defendant; but in the said proceedings last mentioned this defendant did not consider itself a party thereto, nor affected by any orders made in the
46 premises, and was advised by counsel learned in the law that the controversies and differences, if any there existed, were not between the said Doane & Co. and this defendant, but between the said Doane & Co. and the said firm of Hitchcock & Endicott.

This defendant is further unable to state what proceedings were had under said last-mentioned petition, and does not here attempt to give the same as they fully appear in the records and journals of this court, to which reference is hereby made in case this court shall determine that it is the duty of this defendant to take notice of or to answer to the same.

This defendant doth, however, state, on information and belief, that after the execution of this defendant had been duly levied on the goods and chattels of the said Hitchcock and Endicott, and after the property thereunder levied upon had been advertised for sale by said sheriff, John Mattock, one of the attorneys of this defendant, was, as attorney of John L. Beveridge, sheriff of Cook County, and as attorney of the deputies of the said John L. Beveridge acting in the premises, served with a notice to appear and answer to certain proceedings which were being had in this court against the said Beveridge and his deputies, to show cause, &c., and that the said John Mattocks did attend, and, although not appearing or entering their appearance of the said Beveridge, or his deputies, did, as attorney of John L. Beveridge, sheriff, &c., and his deputies, state in open court their objections to any
47 interference by the said messenger with the said sheriff's sale, inasmuch as the said sheriff would be liable to this defendant in case said sheriff and his duputies should not faithfully perform their official duties.

And this defendant further states, on information and belief, that this court did then and there refuse to grant any order on said sheriff, and did decline and refuse to interfere with the sale under the execution as aforesaid; but did in open court, then and there, advise the said sheriff's attorney to adjust matters, if possible, to the satisfaction of all parties in interest, so that a rule to satisfy said execution, and the said execution of Hotchkiss Sons, might be made either at private or public sale by the said messenger, and the monies held to abide the event of the said last-mentioned proceedings in bankruptcy.

And this defendant states, on information and belief, that an order was made by this court in the premises giving the said messenger, or the marshal of said district, power to sell said property either at public or private sale.

And this defendant further states that it was ready and willing at all times to adjust the matter in accordance with the orders and suggestions of this court in the premises, and did at repeated times consent and agree to the orders and suggestions of this court in the premises,

in case the same could be carried into effect without this defendant's doing, or neglecting to do some matter or thing which might be construed by a court or jury as ratifying any acts or omissions by the sheriff made in the premises, or as waiving any irregularities or failure in said sheriff, or his deputies, by them made in the premises.

48

And this defendant states, on information and belief, that said sheriff did take the advice of persons learned in the law, who advised said sheriff that he could not with safety turn over to said messenger or marshal said stock of goods and chattels belonging to said Hitchcock & Endicott, without rendering himself liable to this defendant upon his official bond, and this defendant was advised by counsel learned in the law, that it could not with safety instruct said sheriff to turn over said goods and chattels to said messenger for the reason that said order would release the said sheriff from any liability to this defendant in case said sheriff, or his deputies, had done or omitted to do anything in the premises contrary to law, in the levy and advertisement as aforesaid.

And this defendant further states that, from the time of the levy of said execution as aforesaid up to the time of filing the petition in involuntary bankruptcy by the said firm of Doane & Co. as aforesaid, the goods and chattels levied upon had remained in the store formerly occupied by Hitchcock & Endicott, and at the time of filing said last-mentioned petition, there was a large amount of rent due from the said sheriff, at the rate of about $400 per month, which accrued while the said sheriff was in possession of said goods and chattels levied upon as aforesaid; and there was also a large amount due from said sheriff on account of custodian fees and other expenses in the matter of the levy, as aforesaid. And this defendant was informed and believes, that the said execution of said Hotchkiss Sons was also in the hands of said sheriff, and levied upon the same goods and chattels, and that there was also a certain attachment writ in the hands of said sheriff in favor of parties to this defendant unknown, which said attachment writ was also levied on said goods and chattels.

49

This defendant was also informed that gross irregularities had been committed by said sheriff and his deputies in the matter of the levy and advertisement under said writs of execution as aforesaid, and that certain frauds and impositions were practiced by persons interested in said sale as aforesaid, by persons unknown to this defendant.

And this defendant states that, owing to the complications which might arise from the various matters above mentioned, and, inasmuch as in the said petition, filed by the said Doane & Co. against the said Hitchcock & Endicott, charged this defendant with being a party to said frauds and impositions in the matter of the advertisement for said sale under said executions as aforesaid; and inasmuch as said fraud, errors, or irregularities, if any were committed, were without the knowledge, connivance, or direction of this defendant, this defendant was advised by counsel as aforesaid, that its only safety was to instruct said sheriff that in case the said sheriff or his deputies should fail to proceed according to law in the premises, or suffer the execution claim of this defendant, or any part of the same, to be lost by the neglect, omission, fraud, or carelessness of the said sheriff or his deputies, this defendant would be compelled to commence an action against said sheriff for damages on his official bond.

50

And this defendant states that said sheriff was informed by this defendant to that effect, and as this defendant is informed and believes,

the said sheriff did proceed to sell, under said executions, the goods and chattels levied upon, and to make the money as therein commanded by his writ.

And this defendant further states that no order restraining said sheriff from selling said goods and chattels was ever served on this defendant, and this defendant never knew, or was informed, that it was a party to any such proceedings, or that any such order had been served on said sheriff; and this defendant denies that said goods and chattels were finally sold by the instructions or directions of this defendant, except as herein stated, although this defendant often advised with said sheriff as to the duty of said sheriff and his deputies in the premises, but at all times this defendant particularly cautioned said sheriff
51 that it was the duty of said sheriff to proceed in the premises according to law, and that all this defendant desired in the premises was the amount of money to which it was legally entitled under and by virtue of its said execution as aforesaid.

And this defendant is informed and believes that said sheriff did realize from said sale sufficient in amount to satisfy the execution of this defendant, and to leave a sum in the hands of said sheriff sufficient to satisfy the other execution in his hands.

And this defendant further states that he is informed and believes that said sheriff has never satisfied or returned said executions, but has refused to do so, claiming that he holds the sums of money realized therefrom by the sale as aforesaid, subject to the order and disposition of this court.

And this defendant further states, while respectfully denying the power of this court to interfere with the judgment rendered as aforesaid, in favor of this defendant against the said Hitchcock and Endicott, and protesting against interference of the said complainant in this court with the proceedings had thereupon, it denies that said judgment was improvidently and unauthorizedly entered by the said circuit court of Cook County, and denies that said proceedings were void and of no effect, either under the laws of the State of Illinois, or under the bankrupt laws of the United States, but states that said judgment was in every respect valid, both under the State law and the law of
52 the United States, commonly known as the bankrupt law of March 2d, 1867.

And this defendant denies any knowledge that said Hitchcock and Endicott, being insolvent and in contemplation of insolvency within four months before the filing of the petition beforementioned against the said Hitchcock and Endicott, with a view to give a preference to this defendant, procured the said stock of goods of them, Hitchcock and Endicott, to be seized on execution, or that this defendant had reasonable cause to believe Hitchcock and Endicott to be insolvent, or that said seizure was made in fraud of the provisions of the said bankrupt act, or any knowledge that said Hitchcock and Endicott within six months before the filing of said petition against them, disposed of their said property by means of its seizure upon execution, so that the proceeds thereof might come to this defendant, who then had reasonable cause to believe them to be insolvent, and denies that said seizure was made with a view to prevent their said property from coming to their assignee in bankruptcy, and from being distributed under said act, and denies that said Hitchcock, within six months before filing said petition in contemplation of bankruptcy, gave a warrant to confess judgment to this defendant, and procured and suffered, or procured or suffered their property to be taken on legal process with intent to give

a preference to this defendant, which this defendant had reasonable cause to believe that a fraud on said bankrupt act was intended,
53 and knew that said Hitchcock and Endicott were insolvent. And this defendant denies that the said Hitchcock and Endicott executed the promissory note in which said judgment was rendered, as stated in said bill and said power of attorney to said E. G. Mason, or any other attorney, &c., as aforesaid, or caused the issuance of the execution on said judgment in order to give a preference to this defendant, and in fraud of the provisions of said bankrupt law; and this defendant denies that it knew at the time said judgment note was so given to them, that the said Hitchcock and Endicott were insolvent, or denies the same was given or made, or judgment confessed in fraud of said bankrupt law and in contemplation of bankruptcy, and denies that said Hitchcock and Endicott fraudulently contrived to procure the said seizure of said stock of goods by this defendant, or attempted in the matter to evade the provisions of the bankrupt law.

And this defendant admits that all the indebtedness for which said note was given had not fully matured, but denies that the same was not as large as the amount mentioned in said note; and this defendant denies any knowledge that the proceedings culminating in said judgment and execution, were collusively conducted by said Edward M. Endicott, in particular, or by agreement, or in conjunction with one Endicott, his brother, a director of this defendant.

This defendant does further state that said judgment was obtained against the said Charles Hitchcock and Edward M. Endicott, in
54 good faith, and in the manner following, to wit:

On or about the 5th or 6th day of May, A. D. 1867, the exact date this defendant is unable to state, the said firm of Hitchcock and Endicott transacted business and kept a bank account with this defendant. As is frequently usual in cases where parties seek to make loans of defendant, this defendant demanded of said Hitchcock a statement of the affairs of said firm of Hitchcock & Endicott—this demand was made to enable this defendant to judge of the responsibility of said firm. On or about the 12th day of May, A. D. 1867, one Thomas Hempel, a bookkeeper of said Hitchcock and Endicott, furnished this defendant with a statement, a copy of which is hereto annexed, marked Exhibit "A," which statement purported to be a true and accurate statement of the business affairs of said firm, and to have been made by the said Charles Hitchcock's request. This statement represented the net capital of said firm to exceed the sum of twelve thousand dollars after payment of all its liabilities. Believing said statement to be true and correct, this defendant continued to advance large sums of money to said firm of Hitchcock and Endicott. On or about the 14th day of May, A. D. 1867, this defendant was informed that said Hempel, the bookkeeper of said Hitchcock & Endicott, had absconded, and that the statement, so made by him, was untrue; and it was also hinted to this defendant, that said statement was made by collusion between
55 the said Hempel and the said Charles Hitchcock—the said Edward M. Endicott being, at that time, absent in the East.

This defendant further states that, believing a fraud had been committed on this defendant by the said Charles Hitchcock, acting in behalf of said firm of Hitchcock and Endicott, it demanded a new statement of said Hitchcock, which should show the exact condition of the affairs of the said firm.

This defendant states that said Charles Hitchcock, while holding said firm out to this defendant as being solvent and able to pay all its debts,

and representing that said firm had a net surplus over all its liabilities, did neglect to furnish said statement, as agreed, which caused this defendant great uneasiness and trouble, and caused this defendant to believe that a fraud had been committed by the said Hitchcock in the premises, as the said Hitchcock was either unable or unwilling to furnish this defendant with a statement of the affairs of said firm.

This defendant, continuing to believe itself defrauded by the said Hitchcock of a large sum of money, on or about the 27th day of May, A. D. 1867, immediately on the return of the said Edward M. Endicott from the East, demanded of said firm immediate payment of all its indebtedness or security, at the same time threatening legal proceedings in case said firm decline complying with the demand of this defendant.

56 And this defendant states that said firm did then and there positively refuse to pay their indebtedness, or to give security, or to furnish a statement of their affairs.

This defendant did therefore cause a suit to be commenced in the circuit court of Cook County, on the 28th day of May, A. D. 1867, and did procure a capias to be issued for the arrest of the said Charles Hitchcock, as this defendant feared that the said Hitchcock might take money and assets of said firm and leave the said State.

And to procure said capias this defendant did make affidavit, which said affidavit was filed with the clerk of the said circuit court of Cook County, a copy of which is hereunto annexed, marked Exhibit "B," and is hereby made a part and portion of the answer of this defendant.

And this defendant further states that a summons only was issued for the said Edward M. Endicott; this defendant believing that the said Endicott was in no manner a party to said fraud, as he, the said Endicott, was absent in the East when said monies were so advanced to the said firm of Hitchcock and Endicott.

And this defendant states that the said capias, and also the summons aforesaid, were by the attorney of this defendant, duly placed in the hands of the sheriff of said Cook Cuunty, with instructions to

57 serve the same in case said defendants should decline to furnish any security or to pay the claim owing by said firm to this defendant.

And this defendant further states that said sheriff, by his deputy, immediately after said capias and summons were issued, called at the place of business of the said Hitchcock and Endicott, accompanied by the attorney of this defendant, and said attorney did therefore state to the said Hitchcock and Endicott, that he had come as attorney of this defendant to demand of the said Hitchcock and Endicott, immediate payment of the indebtedness of said Hitchcock and Endicott to this defendant as security for the claim held by this defendant against said Hitchcock and Endicott on account of the monies so advanced to them, as aforesaid, which said request the Hitchcock and Endicott did decline to accede to, stating that they were unable to pay said claim, or to give the security asked for.

And this defendant further states that the attorney of this defendant, at the same time and place, threatened the said Hitchcock with immediate arrest unless said Hitchcock and Endicott should pay the said claim, or give security therefor, or execute a judgment note payable on demand for the amount due this defendant.

And this defendant states that during the interview between said Hitchcock and Endicott, and the attorney of this defendant, as last

58 above stated, the said sheriff's deputy was stationed at the door of said Hitchcock and Endicott's place of business, ready and prepared to serve said capias and summons, and while the said sheriff remained outside of the door, as aforesaid, the said Charles Hitchcock, on pretence of having business in his store, unseen and unnoticed, passed out of the rear door of said place of business, and, as this defendant is informed and believes, left said store for the purpose of avoiding arrest, and the necessity of paying said demand, or giving security, or executing said judgment note as aforesaid.

And said Hitchcock was not again seen or heard of by this defendant until the evening of the said day, last above-mentioned, when this defendant was informed by Endicott, the partner of said Hitchcock, that said Hitchcock, under fear of arrest, had left his place of business, and had gone to his residence for the purpose of preparing to leave the city; and this defendant did immediately direct said sheriff's deputy to proceed to the residence of said Charles Hitchcock, with the clerk of this defendant, and in case the said Hitchcock should refuse to execute said judgment note, as aforesaid, the said sheriff's deputy was instructed to take him, the said Hitchcock, into custody.

And this defendant states that said Endicott did, under threats of suit, and fearing that a capias might issue against him, the said Endicott, *did* finally sign and execute said judgment note, as afore-
59 said, which was drawn for the exact sum due this defendant from the said Hitchcock and Endicott.

And the said Hitchcock did, under the circumstances last above-mentioned, finally, and at or about nine o'clock of the evening of the 28th day of May, A. D. 1867, sign and execute said judgment note, as aforesaid.

And this defendant further states that, on the morning of the 29th day of May, A. D. 1867, this defendant was informed that said Hitchcock and Endicott had previously given a judgment note payable to the order of Hotchkiss Sons, due on demand, for the sum of thirteen hundred dollars, or thereabouts.

And this defendant states that, fearing judgment might be immediately confessed on the said note of Hotchkiss Sons, this defendant, on the day last aforesaid, caused a demand to be made of said Hitchcock and Endicott for the payment of their note held by this defendant.

And this defendant states that said Hitchcock and Endicott positively refused to pay said note, and thereupon this defendant did cause to be applied and indorsed on said note the sum of three hundred and twenty-five and $\frac{20}{100}$ dollars, being the amount in the hands of this defendant belonging to the said Hitchcock and Endicott, and on which said sum this defendant had a bank lien, and the right to apply and endorse the same.

And thereupon this defendant did cause judgment to be confessed,
60 as aforesaid, on said note, for the amount due thereon, with fifty dollars attorneys' fees, and said judgment was, on the said 29th day of May, A. D. 1867, duly entered in the office of the clerk of the circuit court of Cook County aforesaid for the sum of six thousand four hundred and thirty-two and $\frac{23}{100}$ dollars, together with the regular costs of entering the same.

And this defendant states that said judgment note was given for the exact amount (and no more) of the claim which this defendant held against the said Hitchcock and Endicott at the time said note was so given by them, as aforesaid.

And this defendant states that, immediately on the entering of said

judgment, as aforesaid, this defendant did cause execution to be duly issued thereon, and placed in the hands of said sheriff, as aforesaid.

And this defendant states, upon information and belief, that said sheriff did, previous to any other execution against said Hitchcock and Endicott coming into his hands, levy the execution of this defendant on the goods and chattels of the said Hitchcock and Endicott, which levy was so made, as aforesaid, on the 29th day of May, A. D. 1867. And the said sheriff did thereupon place a custodian in charge of said goods and chattels, and did thereupon advertise the same for sale.

61 And this defendant states that, on or about the 29th day of May, A. D. 1867, the said Hotchkiss Sons did also cause their said judgment note to be entered against the said Hitchcock and Endicott, and execution to be immediately issued, and on the same day placed the same in the hands of said sheriff, who immediately levied the same on the goods and chattels of said Hitchcock and Endicott.

And this defendant further states that it had in its hands for collection, on account of said Hitchcock and Endicott, certain drafts or bills of exchange, drawn on divers parties by the said Hitchcock and Endicott, which it was the custom of this defendant to place to the credit of the said Hitchcock and Endicott, relying on the responsibility of the said Hitchcock and Endicott as security, and without regard to the responsibility of the parties on whom said notes or drafts were drawn.

And this defendant states that, at the time said judgment note was so taken as aforesaid, this defendant had in his hands a certain number of notes and drafts and collections as aforesaid, amounting, in the aggregate, as appeared by their face, to the sum of two thousand two hundred and seven and $\frac{43}{100}$ dollars, as near as the amount can be ascertained by this defendant at this time.

And this defendant states that, after the levy of the execution, the sum of nine hundred and forty-three & $\frac{23}{100}$ dollars were realized

62 by this defendant on account of said drafts, bills, and collections; and the said amount was placed in envelopes, with the names of Hitchcock and Endicott marked on the same, and were retained by this defendant in order that the same might be levied upon by the sheriff under the execution aforesaid, belonging to this defendant.

And this defendant states that, immediately thereafter, this defendant notified said sheriff that certain monies, as aforesaid, belonging to the said Hitchcock and Endicott were so held by this defendant, and requested the said sheriff to levy on the same, and apply them on their said execution.

And this defendant states that said sheriff did accordingly levy on said monies, and has them now in his hands, claiming to hold them subject to the order and control of this court.

And this defendant states that said sheriff has at all times absolutely refused and declined to pay over any of said monies realized on said execution to this defendant, but claims and insists that the same are so held by him subject to such order as this court may make in the premises.

And this defendant states that the balance of said bills, notes, and collections remaining in its hands unpaid were, on the demand of said Hitchcock and Endicott, previous to the commencement of any proceedings by or against them in bankruptcy, delivered to the said

63 Hitchcock and Endicott by this defendant, believing that it was secured in its claim by the levy of its execution, as aforesaid.

And this defendant states that it believes that the said demands were of value, but of what value, this defendant is unable to state, having

never been informed whether or not said drafts or bills have been paid to the said Hitchcock and Endicott.

And this defendant states that said drafts, bills, and collections, were only delivered to said Hitchcock and Endicott, under the belief that this defendant was fully secured by the levy under their execution, as aforesaid; and under that supposition, information, and belief, this defendant did part with the above-mentioned bills, drafts, and collections, although this defendant might have enforced a bank's lien on the same.

And this defendant states that it is a banking corporation, doing a banking business, in the city of Chicago aforesaid, and that all the business transacted by and between this defendant and the said Hitchcock and Endicott, was in the regular exercise of its business as a bank, and subject to all the privileges and conditions usually given or imposed upon banks by custom or law.

And this defendant further states that, in all its doings and actions in the premises, it has acted in good and entire good faith, and
64 with a desire to avail itself of its strictly legal rights and equities, and denies having committed any fraud or evasion of the bankrupt law, so-called, or any State law; but has in all things pertaining to the matters in controversy, acted with a view to place its actions and doings under the protection of the law.

And this defendant denies any collusion with the said Hitchcock and Endicott in the premises, or with any other person or persons whomsoever.

And this defendant, while answering the bill of the complainant herein, respectfully denies the jurisdiction of this court in the premises, or the right of this court to compel this defendant to answer thereto, for the following reasons:

1st. Because this defendant is a corporation, residing and doing business in Chicago, in the district aforesaid, and the complainant also resides in the city and district aforesaid.

2nd. Because the offenses charged in said bill to have been committed by this defendant, were committed previous to said bankrupt law going into operation.

3rd. Because the said complainant has never applied to any State court for relief in the matter of the judgment and execution obtained by this defendant against the said Hitchcock and Endicott, or shown any cause in said bill why such relief should not be sought for in the
65 said circuit court of Cook County, in which said judgment was entered.

And this defendant denies all unlawful combinations and confederacy wherewith he is in the said complainant's bill of complaint charged, without this, that some other matter or thing in the said complainant's said bill of complaint charged, and material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, or avoided, traversed, or denied, is true to the knowledge and belief of this defendant. All of which matters and things this defendant is ready to prove and maintain as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Traders' National Bank,

By J. O. RUTTER, *President.*

BLODGETT & WINSTON, and
MATTOCKS & MASON,
*Defendant's Attorneys.*

66 EXHIBIT "A."

ASSETS.

| | | |
|---|---|---|
| Merchandise on hand, and furniture & fixtures | 31,605 | 44 |
| Am't due on "m'd'se ledger," | 6,299 | 95 |
| " " " "cash ledger," | 3,858 | 97 |
| Cash on hand | 12 | 80 |
| | 41,777 | 16 |

LIABILITIES.

| | | |
|---|---|---|
| Due on "m'd'se ledger," | 1,830 | 77 |
| " " "cash do. " | 7,417 | 50 |
| Bills payable | 19,949 | 83 |
| | 29,198 | 00 |
| | 12,579 | 16 |

This is the net capital of the firm on the first day of Jan'y, 1868, the undivided accounts of the firm having been balanced and the balances carried to their capital acc'ts. The present state of affairs will, I believe, not materially differ from the above; if it does, it would, in all probability, increase the capital a little, from all I can judge.

T. H., *Book-keeper.*

67 EXHIBIT "B."

STATE OF ILLINOIS, *Cook County, ss:*

In circuit court of the June term, 1867.

Joseph O. Rutter, president of the Traders' National Bank, a corporation doing business in Chicago, in the State of Illinois, being duly sworn, deposes and says that he is the agent of said bank, and that said bank is about to commence a suit in assumpsit against Charles Hitchcock and Edward M. Endicott, composing the firm of Hitchcock & Endicott, and that the said Charles Hitchcock and Edward M. Endicott, are justly indebted to the said Traders' National Bank, in the sum of six thousand seven hundred and seven and $\frac{43}{100}$ dollars, for monies furnished and advanced to the said firm of Hitchcock and Endicott; and this affiant further states that, on or about the 6th day of May, A. D. 1867, the said Hitchcock, during the absence of the said Endicott from the city of Chicago, came to the said Traders' National Bank, and did then and there represent to this affiant, as president of said bank, that the said firm of Hitchcock and Endicott were in a solvent condition, and at that time had goods, wares, and merchandise, and stock on hand,
68 sufficient to meet all their debts and liabilities; and on the strength of such representations, did, from time to time, obtain from said bank a large amount of monies and credits; and this affiant states that, on or about the 10th day of May, A. D. 1867, at the request of this affiant, the said Charles Hitchcock did cause his bookkeeper then in his employ, to furnish the said bank with a written statement of the affairs of the business of Hitchcock and Endicott, in and by which said statement it was made to appear that said firm had, on the first day of January, A. D. 1867, assets in their hands, over and above

their liabilities, to the amount of twelve thousand five hundred and seventy-nine dollars and sixteen cents, a copy of which statement is hereunto annexed and marked "A," which said statement was signed "T. H., book-keeper," and which statement was fraudulent and untrue.

This affiant further states that, on the representations contained in said statement, he, as the president of said bank did, from time to time, advance to said firm monies and credits to a large amount, which still remain due and unpaid, and that at the times said monies were so advanced, he, the president of said bank, believed said written statement to be correct and true.

This affiant further states that, on or about the 26th day of May, last past, he was informed that a suit had been commenced
69 against said firm; that they had given judgment notes to other parties, from time to time, one of which was drawn payable on demand; that the book-keeper of said firm had absconded, and that the assets of said firm had been fraudulently overstated by the said "T. H., book-keeper;" that this affiant has requested the said Hitchcock and Endicott to refund the monies so advanced by said bank, which request they have refused to grant, and have also refused to pay, or to secure the said bank in the payment of their claim against said firm.

And this affiant further states that he believes that said statement so made to said bank, was made by the book-keeper of said firm as their agent, for the purpose of fraudulently obtaining monies and credits from said bank for the said Hitchcock and Endicott.

And this affiant further states that whatever judgment the said bank may obtain in said suit against the said Charles Hitchcock will be in danger of being lost, unless the said Charles Hitchcock be held to bail.

Subscribed and sworn to before me this twenty-eighth day of May, A. D., 1867.

(Signed) J. O. RUTTER.

Subscribed and sworn to before me this 28th day of May, 1867.

(S'd) W'M L. CHURCH, *Clerk.*

(Endorsed:) Filed April 3, 1868. W'm H. Bradley, cl'k.

70 On this day, to wit, the 3d day of April, A. D. 1868, came said complainant by his solicitors, and filed in said clerk's office his replication in said entitled cause, which said replication is in the words and figures following, to wit:

*Replication to answer.*

In the United States district court in & for the northern district of Illinois.

GEORGE W. CAMPBELL, ASSIGNEE, &C., COMPL'T,
*vs.*
THE TRADERS' NATIONAL BANK, &C., & HOTCHKISS SONS, def'ts. } In chancery.

The replication of George W. Campbell, assignee, &c., to the answer of the Traders' National Bank of Chicago, one of the defendants in the above-entitled cause.

This repliant, saving and reserving unto himself now, & at all times hereafter, all & all manner of benefit and advantage of exception, which may be had or taken to the manifold insufficiencies of the said answer,

for replication thereunto, says that he will aver, maintain, & prove his bill of complaint to be true, certain, & sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, & insufficient to be replied unto by this repliant;
71 without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, & not herein, & hereby well & sufficiently replied unto, confessed & avoided, traversed or denied, is true. All which matters & things this repliant is, & will be, ready to aver, maintain, & prove as this honorable court shall direct, & humbly prays, as in & by his said bill he has already prayed.

FULLER & SHEPARD,
*Sol'rs for Compl't.*

(Endorsed:) Filed April 3, 1868. W'm H. Bradley, cl'k.

On this day, to wit, the 12th day of June, in the adjourned March term, A. D. 1868, of said court in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

GEORGE W. CAMPBELL, ASSIGNEE OF CHARLES Hitchcock and Edward M. Endicott,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO AND Hotchkiss Sons.
} In chancery.

Now comes the complainant, by his solicitor, and on his motion, it is ordered by the court that this cause be referred to Henry W. Bishop, jr., esq., one of the masters of this court, to take proof and report
72 the same to the court.

On this day, to wit, the 16th day of December, A. D. 1868, came said parties by their solicitors, and filed in said clerk's office their stipulation, together with exhibits "A," "B," "C," "D," "E," "F," and "G," referred to them; which said stipulation and exhibits are in the words and figures following, to wit:

*Stipulation as to records & exhibits from State court.*

GEORGE W. CAMPBELL, ASSIGNEE, &C., COMPL'T,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO & als., def'ts.

It is hereby stipulated by the attorneys and solicitors of the complainant and the defendant, the Traders' National Bank of Chicago, that the accompanying records of the circuit court of Cook County, to wit: 1. Record marked A, of suit commenced (by capias against Hitchcock, and summons against Endicott,) against Charles Hitchcock and Edward M. Endicott by said Traders' National Bank in assumpsit;
73 2. Record marked B of proceedings and judgment by confession in the said court against the said Hitchcock & Endicott upon the judgment note in question, and which is the judgment in question herein; 3. Record marked C, of proceedings and judgment by confession in said court in favor of Hotchkiss and Sons, and against Hitchcock & Endicott in said circuit court, and which is the other judgment in question herein, may be received and read in evidence on the hearing hereof, subject to such objections to competency as may be raised. And it is

admitted and agreed that the affidavit of Joseph O. Rutter, appearing in the record of the suit commenced by capias & summons against Hitchcock & Endicott by said Traders' National Bank (numbered A ante) may be taken and read in evidence as if the original affidavit were herein produced.

And that the affidavit of Orson Smith appearing in the record of the confession of judgment against said Hitchcock & Endicott in favor of said Traders' National Bank may be taken and read in evidence, as if the original affidavit were herein produced.

And it is further agreed that said Orson Smith would testify, if called as a witness upon the hearing hereof, to the same effect as in said affidavit contained.

74 It is further stipulated and agreed that the following attachment suits were commenced in the superior court of Chicago, on the dates, for the amounts, and by the attorneys hereunder written, and disposed of as stated, to wit: Exhibit marked "D," Doane et al. vs. Hitchcock & Endicott, commenced June 1st, 1867, Morse & Temple, attorneys, for $2,500, dismissed September 11th, 1867; De Forest et al. vs. same for $221 19, Hurd, Booth & Kramer, attorneys, and commenced June 1, 1867; exhibit marked "E," and dismissed June 8th, 1867; Peoria Starch Company vs. the same for $1,730 65, attachment in aid, Harding, attorney; exhibit marked "F," commenced May 30th, 1867, no order of disposition entered; Eastham & al. vs. the same for $4,000, Fuller & Shepard, attorneys, commenced May 31st, 1867, dismissed November 30, 1868.

And it is further agreed that levies upon the stock of Hitchcock & Endicott were indorsed upon the writs in each of the foregoing cases by the sheriff of Cook County, by his deputy Fisher on the day of the issuance of each thereof, and that the accompanying copies are true and correct, and may be so taken, and that the writ, in favor of Eastham & als. has been mislaid, but is substantially the same as the others, except in the amount and date which are as above stated.

75 It is further stipulated that the statement of A. B. Cotes, deputy United States marshal, exhibit marked "G," hereto attached, may be taken and read as evidence in said cause subject to all objections that may be made as to the competency of said testimony or any part thereof.

It is also stipulated that the Traders' National Bank gave to the sheriff of Cook County an indemnifying bond, in double the amount of the said judgment, in favor of said bank, before the levy of execution issued thereon, which bond being imperfectly executed, a new bond, bearing the same date, was executed and delivered to said sheriff in lieu thereof, in August, 1867, before the sale of the stock of goods of Hitchcock & Endicott on said execution.

And it is further stipulated that it is the usual custom for the sheriff of Cook County to require indemnifying bonds before proceeding to levy and sell under executions placed in his hands, and that said bond was given, in this instance, by requirement of the sheriff in acccordance with said usage.

And it is further stipulated that the said judgment note taken by the Traders' National Bank, was duly stamped as required by law.

MATTOCKS & MASON,
*Att'ys for Traders' National Bank.*
M. W. FULLER,
*Sol. for Compl't.*

(Endorsed:) Filed Dec. 16, 1868. William H. Bradley, cl'k.

76 EXHIBIT "A."

UNITED STATES OF AMERICA,
*State of Illinois, County of Cook, ss:*

Pleas before the Honorable Erastus S. Williams, judge of the seventh judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Cook County, in the State aforesaid, and at a term thereof begun and held at the court-house, in the city of Chicago, in said county, on the third Monday, being the twentieth (20th) day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the said United States the niney-first:

Present, Honorable E. S. Williams, judge of the 7th judicial circuit of the State of Illinois; Charles H. Reed, State's attorney; John L. Beveridge, sheriff of Cook County.

Attest: WILLIAM L. CHURCH, *Clerk.*

Be it remembered that heretofore, to wit, the Traders' National Bank by Messrs. Mattocks & Mason, its attorney, filed, in the court aforesaid, its certain præcipe for summons and affidavit, in the words and figures following, viz:

77 *Præcipe.*

STATE OF ILLINOIS,
*Cook County, ss:*

Circuit court of Cook County, of the June term, A. D. 1867.

THE TRADERS' NATIONAL BANK, PLAINTIFF,
*vs.*
CHARLES HITCHCOCK AND EDWARD M. ENDICOTT, def'ts. } Assumpsit.

The clerk of said court will issue a capias for Charles Hitchcock, and a summons for Edward M. Endicott in the above cause, directed to the sheriff of Cook County, in plea of trespass on the case on promises, returnable at the June term of said court, A. D. 1867, to the damage of the plaintiff of seven thousand dollars.

MATTOCKS & MASON,
*Pl'ffs' Att'ys.*

To WILLIAM L. CHURCH, Esq., *Clerk.*

*Affidavit.*

STATE OF ILLINOIS,
*Cook County, ss:*

In circuit court of June term, 1867.

78 Joseph O. Rutter, president of the Traders' National Bank, a corporation doing business in Chicago, in the State of Illinois, being duly sworn, deposes and says, that he is agent of said bank, and that said bank is about to commence a suit in assumpsit against Charles Hitchcock and Edward M. Endicott, composing the firm of Hitchcock and Endicott, and that the said Charles Hitchcock and Edward M. Endicott are justly indebted to the said Traders' National Bank in the sum of six thousand seven hundred and seven and $\frac{43}{100}$ dollars, for monies furnished and advanced to the said firm of Hitchcock and Endicott; and this affiant further states that, on or about the 6th day of May,

A. D. 1867, the said Hitchcock, during the absence of the said Endicott from the city of Chicago, came to the said Traders' National Bank, and did then and there represent to this affiant, as president of said bank, that the said firm of Hitchcock and Endicott were in a solvent condition, and at that time had goods, wares, and merchandise, and stock on hand sufficient to meet all their debts and liabilites; and on the strength of such representations did, from time to time, obtain from said bank a large amount of moneys and credits; and this affiant states that, on or about the 10th day of May, A. D. 1867, at the request of this affiant, the said Charles Hitchcock, did cause his book-keeper,
79 then in his employ, to furnish the said bank with a written statement of the affairs of the business of Hitchcock and Endicott, in and by which said statement it was made to appear that said firm had, on the first day of January, A. D. 1867, assets in their hands, over and above their liabilities to the amount of twelve thousand five hundred and seventy-nine dollars and sixteen cents, a copy of which statement is hereunto annexed, and marked "Schedule A," which said statement was signed "T. H., book-keeper," and which statement was fraudulent and untrue.

This affiant further states that, on the representations contained in said statement, he, as the president of said bank, did, from time to time, advance to said firm moneys and credits to a large amount, which still remain due and unpaid, and that at the times said moneys were so advanced, he, the president of said bank, believed said statement to be correct and true. This affiant further states that, on or about the 26th day of May last past, he was informed that a suit had been commenced against said firm; that they had given judgment notes to other parties from time to time, one of which was drawn payable on demand; that the book-keeper of said firm has absconded, and that the assets of said firm had, been fraudulently overstated by the said "T. H., book-keeper;" that this affiant has requested the said Hitchcock
80 and Endicott to refund the moneys so advanced by said bank, which request they have refused to grant, and have also refused to pay, or to secure the said bank in the payment of their claim against said firm.

And this affiant further states that he believes that said statement, so made to said bank, was made by the book-keeper of said firm, as their agent, for the purpose of fraudulently obtaining monies and credits from the said bank for the said Hitchcock and Endicott. And affiant further states that whatever judgment the said bank may obtain, in said suit against the said Charles Hitchcock, will be in danger of being lost unless the said Charles Hitchcock be held to bail.

Subscribed and sworn to before me this twenty-eighth day of May, A. D. 1867.

J. O. RUTTER.

Subscribed and sworn to before me this 28th day of May, 1867.

W'M L. CHURCH, *Clerk.*

81 ASSETS.

| | |
|---|---|
| Merchandise on hand and furniture & fixtures..... | $31,605 44 |
| Am't due on "m'd'se ledger"..... | 6,299 95 |
| " " " "cash ledger"..... | 3,858 97 |
| Cash on hand..... | 12 80 |
| | 41,777 16 |

LIABILITIES.

| | | |
|---|---|---|
| Due on "m'd'se ledger" | 1,830 | 77 |
| " " "cash " | 7,417 | 50 |
| Bills payable | 19,949 | 84 |
| | 29,198 | 00 |
| | $12,579 | 16 |

This is the net capital of the firm on the first day of January, 1867, the individual accounts of the firm having been balanced and the balances carried to their capital acc'ts. The present state of affairs will, I believe, not materially differ from the above; if it does, it would to all probability, increase the capital a little, from all I can judge.

T. H., *Bookkeeper.*

And afterwards, to wit, on the 29th day of May, in the year aforesaid, the same being one of the days of the May term in said year, the following proceedings were had in said court and entered of record therein in said cause, viz:

82 *Order of dismissal.*

TRADERS' NATIONAL BANK *vs.* CHARLES HITCHCOCK AND EDWARD M. ENDICOTT. } 27612.—Assumpsit.

On motion of plaintiffs' attorneys said cause is hereby dismissed at the plaintiff's costs.

STATE OF ILLINOIS, *Cook County, ss:*

I, William L. Church, clerk of the circuit court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all the papers and proceedings filed and recorded in my office in the above-entitled suit.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago, in said county, this 24th day of February, A. D. 1868.

[SEAL.] W'M L. CHURCH, *Clerk.*

[5-cent stamp.]

(Endorsed:) Filed Dec. 16, 1868. W'm H. Bradley, clerk.

83 EXHIBIT "B."

UNITED STATES OF AMERICA,
*State of Illinois, County of Cook, ss:*

Pleas before the Honorable Erastus S. Williams, judge of the seventh judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Cook County, in the State aforesaid, and at a term thereof begun and held at the court-house in the city of Chicago, in said county, on the third Monday being the twentieth (20th) day of May, in the year of our Lord one thousand eight hundred and sixty-

seven, and of the independence of the said United States the ninety-first:

Present, Honorable E. S. Williams, judge of the 7th judicial circuit of the State of Illinois; Charles H. Reed, State's attorney; John L. Beveridge, sheriff of Cook County.

Attest:

W'M L. CHURCH, *Clerk.*

Be it remembered, that heretofore, to wit, on the 29th day of May, A. D. 1867, The Traders' National Bank by M'rs Mattocks & Mason, its attorneys, filed in the office of the clerk of the county aforesaid, its certain declaration, note & affidavit against Charles Hitchcock and Edward M. Endicott in the words and figures following, viz:

84 *Declaration.*

Circuit court of Cook County, in May term, A. D. 1867.

STATE OF ILLINOIS, *Cook County, ss:*

The Trader's National Bank, plaintiff in this suit, by Mattocks & Mason, their attorneys, complain of Charles Hitchcock and Edward M. Endicott, defendants in a plea of trespass on the case on promises: For that whereas the said defendant heretofore, to wit, on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, at Chicago, to wit, at said county of Cook, made their certain promissory note, in writing, bearing date the day and year aforesaid, and then and there delivered the same to the said Traders' National Bank, in and by which said note said defendants by the name, style, and description of Hitchcock and Endicott, promised to pay to the order of the said Traders' National Bank, on demand, the sum of six thousand seven hundred and seven dollars and forty-three cents, with interest at the rate of ten per cent per annum, for value received; and whereas demand has been made for the payment of said note by the said plaintiff of the said defendants, and payment thereon has been refused. By means whereof and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable in consideration thereof, then and there undertook and promised to
85 pay the same to the said plaintiff, according to the tenor and effect, true intent and meaning of the said note and of the endorsement aforesaid, to wit, at the place aforesaid.

Yet the said defendants, although often requested, &c., hath not yet paid the said sum of money, or any part thereof, to the plaintiff, but so to do hath hitherto wholly refused, and still do refuse, to the damage of the plaintiff of seven thousand dollars, and therefore they bring suit, &c.

MATTOCKS & MASON,
*Plaintiff's Attorneys.*

*Note sued on.*

$6,707 43 CHICAGO, ILL'S, *May 28th*, 1867.

On demand we promise to pay to the order of Traders' National Bank of Chicago, six thousand and seven hundred & seven $\frac{43}{100}$ dollars, value received, with interest after maturity at 10 %, per annum.

HITCHCOCK & ENDICOTT.

[$3 rev. stamp.]

(Endorsed:) Rec'd on within note three hundred and twenty-five $\frac{20}{100}$ dols. Chicago, May 29th, 1867.

86 *Affidavit.*

STATE OF ILLINOIS, *County of Cook, ss:*

Orson Smith, being duly sworn, on oath states that he has seen Charles Hitchcock and Edward M. Endicott, whose names are subscribed to the within warrant of attorney and promissory note, and that they signed and executed said warrant of attorney and promissory note in the presence of this affiant, on the twenty-eighth day of May, A. D. 1867. That the signatures to the said warrant of attorney are in the handwriting of the said Charles Hitchcock and Edward M. Endicott, and that, on the 29th day of May, A. D. 1867, he, this affiant, made a demand of the firm of Hitchcock & Endicott, for payment of the said note in behalf of the within-named plaintiff, and payment of said note was, by said firm refused, and the said note is still due and unpaid.

ORSON SMITH.

Sworn to and subscribed to before me this twenty-ninth day of May, A. D. 1867. W'M L. CHURCH, *Clerk.*

And afterwards, to wit, on the same day and year aforesaid, said defendants, Hitchcock & Endicott, filed in the court aforesaid
87 their certain warrant of attorney and cognovit in said cause, in the words and figures following, to wit:

*Warrant of attorney.*

Know all men by these presents, that we, the subscribers, are justly indebted to Traders' National Bank of Chicago, upon a certain promissory note, bearing even date herewith for the sum of six thousand and seven hundred and seven $\frac{43}{100}$ dollars, with interest at 10 per cent. per annum after maturity, and due on demand.

Now, therefore, in consideration of the premises, we hereby make, constitute, and appoint, E. G. Mason, or any attorney of any court of record, to be our true and lawful attorney, irrevocably for us, and in our name, place, and stead, to appear in any court of record, in term-time or in vacation, in any of the States or Territories of the United States, at any time after said note becomes due, to waive the service of process and confess a judgment, in favor of the said Traders' National Bank, or their assigns or assignees, upon the said note, and for the above sum, or for as much as appears to be due, according to the tenor and effect of said note and interest thereon, to the day of the entry of said judgment, together with costs and fifty dollars attorneys' fees; and also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judg-
88 ment entered by virtue hereof, nor any bill in equity filed, to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up said judgment, or issuing the execution thereon; and also to waive all benefit of or advantage to which we may be entitled by virtue of any homestead, stay, or other exemption law, now or hereafter in force, in this or any State or Territory where judgment may be entered by virtue hereof,

hereby ratifying and confirming all that our said attorney may do by virtue hereof.

Witness our hands and seals this twenty-eighth day of May, A. D. 1867.

CHARLES HITCHCOCK. [SEAL.]
EDWARD M. ENDICOTT. [SEAL.]

In presence of—
ORSON SMITH.

[40 cents rev. stamp.]

*Cognovit.*

Circuit court of Cook County, in May term, A. D. 1867.

CHARLES HITCHCOCK AND EDWARD M. ENDICOTT *ads.* TRADERS' NATIONAL BANK. } Cognovit.

And the said Charles Hitchcock and Edward M. Endicott, defendants in the above-entitled suit, by Junius Mulvey, their attorney, come
89 and defend the wrong and injury when, &c., and waive service of process, and say that they cannot deny the action of the said plaintiff, nor but that the said plaintiff hath sustained damages on occasion of the non-performance of the several promises and undertakings in the said declaration mentioned, including the sum of fifty dollars for their reasonable attorneys' fees for entering up this judgment, over and above their other costs and charges by them about their suit in this behalf expended, to the sum of six thousand four hundred and thirty-two dollars and twenty-three cents; and the said defendants further agree that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and that he thereby release all errors that may intervene in entering up the same, or issuing the execution thereon, and consent to immediate execution upon said judgment.

JUNIUS MULVEY,
*Defendant's Attorney.*

And thereupon, on the 29th day of May, in the year aforesaid, the same being one of the days of the May term of said court for said year, the following, among other proceedings, were had in said court, and entered of record therein in said cause, viz:

90 *Record of judgment.*

TRADERS' NATIONAL BANK *vs.* CHARLES HITCHCOCK AND EDWARD M. ENDICOTT. } 27614. Assumpsit

This day came into court the said Traders' National Bank, plaintiff by Messrs. Mattocks & Mason, its attorneys, and filed its declaration against the said Charles Hitchcock and Edward M. Endicott, defendants, of a plea of trespass on the case on promises, and thereupon Junius Mulvey, esq., one of the attorneys of this court, appeared on behalf

of the said Charles Hitchcock and Edward M. Endicott, and by virtue of a warrant of attorney, for that purpose executed by the said Charles Hitchcock and Edward M. Endicott, and now produced, duly proved and filed, filed his cognovit, waiving the issuing and service of process, and acknowledged that the said defendants did assume and promise in manner and form as the said plaintiff hath in his said declaration alleged against the said defendants, and confessed that said plaintiff hath sustained damages by reason thereof to six thousand four hundred and thirty-two dollars and twenty-three cents. Therefore it is considered that the said Traders' National Bank recover of the said Charles Hitchcock and Edward M. Endicott, the said sum of six thousand four
91 hundred and thirty-two ($6,432 23) dollars and twenty-three cents, its damages so confessed as aforesaid, and also its costs in that behalf expended, and have execution therefor.

STATE OF ILLINOIS, *County of Cook, ss:*

I, William L. Church, clerk of the circuit court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the papers on file, and proceedings of record in my office, in a certain suit lately pending in said court on the common law side thereof, wherein the Traders' National Bank was plaintiff, and Charles Hitchcock and Edward M. Endicott, defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago, in said county, this 24th day of February, A. D. 1868.

[SEAL.] W'M L. CHURCH, *Clerk.*

[5-cent stamp.]

(Endorsed:) Filed Dec. 16, 1868. W'm H. Bradley, clerk.

92 EXHIBIT "C."

UNITED STATES OF AMERICA,
*State of Illinois, County of Cook, ss:*

Pleas before the Honorable Erastus S. Williams, judge of the seventh judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Cook County, in the State aforesaid, and at a term thereof begun and held at the court-house, in the city of Chicago, in said county, on the third Monday (being the twentieth day) of May, in the year of our Lord one thousand eight hundred and sixty-seven: and of the independence of the said United States the ninety-second.

Present, Honorable E. S. Williams, judge of the 7th judicial circuit of the State of Illinois; Charles H. Reed, State's attorney; John L. Beveridge, sheriff of Cook County.

Attest:

WILLIAM L. CHURCH, *Clerk.*

Be it remembered that heretofore, to wit, on the 30th day of May, A. D. 1867, Hotchkiss Sons, by their attorney, E. G. Asay, esq., filed in the office of the clerk of the court aforesaid their certain bond for costs, declaration, instrument sued upon, with a power of attorney
93 attached thereto, and affidavit against Charles Hitchcock and Edward M. Endicott, in words and figures following, to wit:

*Bond for costs.*

Circuit court of Cook County.

HOTCHKISS SONS
*vs.*
CHARLES HITCHCOCK, EDWARD M. ENDICOTT.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or any of the officers of this court in pursuance of the laws of this State.

A. H. LAWRENCE.

Dated this 30th day of May, A. D. 1867.

*Declaration.*

Circuit court of Cook County, May term, A. D. 1867.

STATE OF ILLINOIS,
*Cook County, ss :*

Hotchkiss Sons, a corporation duly existing under the laws of the State of Connecticut, by E. G. Asay, their attorney, come and complain of Charles Hitchcock and Edward M. Endicott, defendants in this suit of a plea of trespass on the case upon promises. For that whereas the said defendants on the fifth day of March, 1867, at Chicago, to wit, at the said county of Cook, made their certain promissory note
94 in writing, and delivered the same to the plaintiff, whereby the defendant then and there promised to pay the plaintiffs by the name and style of Hotchkiss Sons, on demand, which period has now elapsed, thirteen hundred and forty dollars and eleven cents for value received with interest at the rate of seven per cent.

Yet the said defendants, although often requested, etc., have not yet paid the said sum of money or any part thereof to the plaintiffs, but so to do hath hitherto wholly refused, and still do refuse to the damage of the plaintiffs of two thousand dollars, and therefore they bring suit, &c.

E. G. ASAY,
*Plaintiff's Attorney.*

*Instrument sued upon.*

$1,340 11. CHICAGO, *March 5th*, 1867.

On demand, for value received, we promise to pay to the order of Hotchkiss Sons, the sum of thirteen hundred and forty & $\frac{11}{100}$ dollars, with interest at the rate of seven per cent.

CHARLES HITCHCOCK.
EDWARD M. ENDICOTT.

[Rev. stamp, 75 cents.]

95 *Power of attorney.*

Know all men by these presents that whereas we, the subscribers, are now justly indebted to Hotchkiss Sons upon a certain promissory note, bearing even date herewith, for the sum of thirteen hundred and forty dollars and eleven cents, made payable to the order of the said Hotch-

kiss Sons, and due on demand, and may from time to time hereafter become further or otherwise justly indebted to the said Hotchkiss Sons upon bonds, promissory notes, due-bills, and other written evidences of debt, made or to be made, indorsed, or accepted by us, and held or owned by the said Hotchkiss Sons, or assignees thereof.

Now, therefore, in consideration of the premises and of the sum of one dollar to us paid by the said Hotchkiss Sons, the receipt whereof is hereby acknowledged, we do hereby make, constitute, and appoint R. S. Wilson or any attorney of any court of record to be our true and lawful attorney, irrevocable for us, and, in our name, place, and stead, to appear in and before any court of record, either in term-time, or in vacation, in any of the States or Territories of the United States at any time after the maturity of said note, or of any such bond, promissory note, due-bill or other written evidence of debt so already made or to be made, indorsed or accepted by us, as aforesaid, respectively to waive service of
96 process, and confess a judgment in favor of the said Hotchkiss Sons, executors, administrators, assignee or assignees, or the legal holder or holders of said note, or of any one or more of such bonds, promissory notes, due-bills or other written evidences of debt, as aforesaid, for so much money as shall, by the same, appear to be due or owing thereon, with interest thereon, according to the tenor and effect thereof, respectively, together with costs; also for twenty dollars attorneys' fees to be added to the amount due or owing on entering up judgment; also to file a cognovit for the amount that may be so due or owing, including attorneys' fees, as aforesaid, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered up by virtue hereof, nor any bill in equity filed to restrain, or in any manner interfere with the operation of said judgment, or any execution issued or to be issued thereon, and to release all errors that may intervene in the entering up of any such judgment, or issuing any execution thereon, and to consent, stipulate, and agree that any execution issued or to be issued upon such judgment may be immediately levied upon and satisfied out of any personal property which we may have or own, and to waive and relinquish all our right to have our personal property last taken and levied upon to satisfy such execution, and also to consent that such execution may issue upon any such judgment immediately, hereby ratifying and confirming all that our said attorney may do by virtue hereof. And in consideration of the premises we do hereby stipulate, covenant, and agree with the said Hotchkiss Sons, ex-
97 ecutors, administrators, and with the assignee, assignees, or the legal holder or holders of said note, or of any one or more of such bonds, promissory notes, due-bills or other written evidences of debt, as aforesaid, that any execution so issued or to be issued, as aforesaid, may first be levied upon and satisfied out of any personal property which we may have or own, hereby expressly waiving all right to have our property last taken and levied upon to satisfy such execution.

Witness our hands and seals this fifth day of March, A. D. 1867.

CHARLES HITCHCOCK. [SEAL.]
EDWARD M. ENDICOTT. [SEAL.]

[Rev. stamp, 50 cents.]

*Affidavit.*

STATE OF ILLINOIS, *Cook County, ss:*

A. H. Lawrence, being sworn, says he knows Charles Hitchcock and

Edward M. Endicott, the makers of the annexed note, and that said Charles Hitchcock and Edward M. Endicott executed the power of attorney hereto attached in the presence of this affiant.

A. H. LAWRENCE.

Sworn to and subscribed before me this 30th day of May, 1867.

W'M L. CHURCH, *Clerk.*

98 And thereupon afterwards, to wit, on the same day and year, said defendants, by R. S. Wilson, esq., their attorney, filed in said court their certain cognovit in said cause, in the words and figures following, viz:

*Cognovit.*

STATE OF ILLINOIS, *Cook County, ss:*

Circuit court of Cook County *County*, May term, A. D. 1867.

CHARLES HITCHCOCK, EDWARD M. ENDICOTT, *ads.* HOTCHKISS SONS. } Cognovit.

And the said Charles Hitchcock and Edward M. Endicott, defendants in the above-entitled suit, by R. S. Wilson, their attorney, come and defend the wrong and injury when, &c., and waive service of process, and say that he cannot deny the action of the said plaintiffs; nor but that they, the defendants, did undertake and promise, in manner and form as the said plaintiffs have thereof above complained against them, nor but that the said plaintiffs have sustained damages on occasion of the non-performance of the several promises and undertakings in the said declaration mentioned, including the sum of twenty dollars for their reasonable attorneys' fees for entering up this judgment, over and above their other costs and charges by them about said suit in
99 this behalf expended, to thirteen hundred and seventy-nine dollars and cents. And the said defendant further agree that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere, in any manner, with the operation of said judgment, and that he hereby release all errors that may intervene in entering up the same, or issuing the execution thereon, and consent to immediate execution upon such judgment.

R. S. WILSON,
*Defendant's Attorney.*

And thereupon afterwards, to wit, at the May term of said court for the year aforesaid, to wit, on the 30th day of May, in said year, the following proceedings among others in said court, were had, and entered of record therein, in said cause, viz:

*Record of judgment.*

HOTCHKISS SONS *vs.* CHARLES HITCHCOCK AND EDWARD M. ENDICOTT. } 27622. Assumpsit.

This day came into court the said Hotchkiss Sons, plaintiffs, by E.

G. Asay, esq., their attorney, and filed their declaration against the said Charles Hitchcock and Edward M. Endicott, defendants, of a plea of trespass on the case on promises, and thereupon R. S. Wilson, esq., one of the attorneys of this court, appeared in behalf of the said
100 Charles Hitchcock and Edward M. Endicott, and by virtue of a warrant of attorney for that purpose, executed by the said Charles Hitchcock and Edward M. Endicott, and now produced, duly proved and filed, filed their cognovit, waiving the issuing and service of process, and acknowledged that the said defendants did assume and promise, in manner and form, as the said plaintiffs hath in their said declaration alleged against said defendants, and confessed that said plaintiffs hath sustained damages by reason thereof, to one thousand three hundred and seventy-nine dollars.

Therefore it is considered that the said Hotchkiss Sons recover of the said Charles Hitchcock and Edward M. Endicott the said sum of one thousand three hundred and seventy-nine dollars, ($1,379 00,) their damages so confessed, as aforesaid, and also their costs in that behalf expended, and have execution therefor.

STATE OF ILLINOIS, *Cook County, ss:*

I, William L. Church, clerk of the circuit court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all the papers on file, and proceedings of record in my office, in a certain suit lately pending in the court aforesaid, on the common law side thereof, in which Hotchkiss
101 Sons were plaintiffs, and Charles Hitchcock and Edward M. Endicott were defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 30th day of November, A. D. 1868.

[SEAL.] W'M L. CHURCH, *Clerk.*

[Stamp, 5 cents, cancelled.]

(Endorsed:) Filed Dec. 16, 1868. W'm H. Bradley, cl'k.

EXHIBIT "D."

STATE OF ILLINOIS, *Cook County, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

Whereas Charles H. Doane, as agent, &c., hath complained on oath to Thomas B. Carter, clerk of the superior court of Chicago, Cook County, that Charles Hitchcock and Edward Endicott, copartners, &c., are justly indebted to Heman S. Doane and Hiram Averill, to the amount of twenty-five hundred dollars, and oath having been also made that the said Charles Hitchcock and Edward Endicott have fraudulently conveyed and assigned their property and effects so as to hinder and delay their creditors within two years prior to this date, and that they
102 have fraudulently concealed and disposed of their property and effects so as to hinder and delay their creditors, so that the ordinary process of law cannot be served upon *him* within two years prior to this date; and the said Charles H. Doane, as agent, &c., having given bond and security according to the directions of the act in such case made and provided.

We therefore command you that you attach so much of the estate,

real or personal, of the said Charles Hitchcock and Edward Endicott, copartners, &c., to be found in your county, as shall be of value sufficient to satisfy said debt and costs, according to the said complaint, and such estate so attached in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon according to law, at a term of said superior court of Chicago, to be holden at Chicago, within and for the county of Cook, on the first Monday of June next, so as to compel the said Charles Hitchcock and Edward Endicott, copartners, &c., to appear and answer the complaint of said Heman S. Doane and Hiram Averill, copartners, &c.; and that you also summon as garnishee, to be and appear at the said court on the said first Monday of next, then and there to answer to what may be objected against , when and where you shall make known to the said court how you have executed this writ. And have you then and there this writ.

103 Witness Thomas B. Carter, clerk of said court, and the seal thereof, at Chicago, in said county, this 1st day of June, A. D. 1867.

THOMAS B. CARTER, *Clerk.*

By virtue of the within writ of attachment, I did, on this 1st day of June, 1867, levy upon and attach all the right, title, and interest of the within-named defendants, in and to the property described in schedule marked "A," and annexed to writ No. 18091, issued from the superior court of Chicago, in favor of Peoria Starch Manufacturing Company, and against Hitchcock et al.

Also served this writ by reading to the within-named defendants this 1st day of June, 1867.

JOHN L. BEVERIDGE, *Sheriff*,
By G. FISHER, *Deputy.*

Fees, $1 80, p'd by pl'ff att'y.

(Endorsed:) Filed Dec. 16th, 1868.

W'M H. BRADLEY, *Clerk.*

104 EXHIBIT "E."

STATE OF ILLINOIS,
*Cook County, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

Whereas Charles T. Morse, as attorney-in-fact, &c., hath complained on oath to Augustus Jacobson, clerk of the superior court of Chicago, within and for the county of Cook, that Charles Hitchcock and Edward M. Endicott, copartners, &c., justly indebted to Charles H. De Forest, Linson De Forest, and Sarah J. Morse, copartners, &c., to the amount of two hundred and twenty-one dollars and nineteen cents, ($221 19,) and oath having been also made that the said Charles Hitchcock and Edward M. Endicott are about to depart from this State with the intention of having their effects removed from this State to the injury of the said Charles H. De Forest, Linson De Forest, and Sarah J. Morse:

And the said Charles T. Morse, as attorney-in-fact, having given bond and security, according to the directions of the act in such case made and provided—

We therefore command you that you attach so much of the estate,

real or personal, of the said Charles Hitchcock and Edward M. Endicott, copartners, &c., to be found in your county, as shall be of value sufficient to satisfy said debt and costs according to the said complaint, and such estate so attached in your hands to secure, or so to provide, that
105 the same may be liable to further proceedings thereupon, according to law, at a term of said superior court, of Chicago, to be holden at Chicago, within and for the county of Cook, on the first Monday of June next, so as to compel the said Charles Hitchcock and Edward M. Endicott, copartners, &c., to appear and answer the complaint of said Charles H. De Forest, Linson De Forest, and Sarah J. Morse, copartners, &c., and that you also summon , as garnishee, to be and appear at the said court on the said first Monday of next, then and there to answer to what may be objected against, when and where you shall make known to the said court how you have executed this writ; and have you then and there this writ.

Witness *Augustus Jacobson*, clerk of said court, and the seal thereof, at Chicago, in said county, this 1st day of June, A. D. 1867.

[SEAL.] THOMAS B. CARTER, *Clerk.*

By virtue of the within writ of attachment I did, on this 1st day of June, 1867, levy upon and attach all the right, title, and interest of the within-named defendants in and to the property described in schedule marked "A," and annexed to writ No. 18091, issued from the superior court of Chicago, in favor of Peoria Starch Manufacturing Company, and against Hitchcock et al.; also served this writ by reading to
106 the within-named defendants this 1st day of June, 1867.

By JOHN L. BEVERIDGE, *Sheriff*,
By G. FISHER, *Dep'ty.*

$1 80, pl'ffs att'y.

(Endorsed:) Filed Dec. 16th, 1868. W'm H. Bradley, clerk.

EXHIBIT "F."

STATE OF ILLINOIS,
*Cook County, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

Whereas E. S. Wilcox, as agent and superintendent of Peoria Starch Manufacturing Company, hath complained on oath to Thomas B. Carter, clerk of the superior court of Chicago, Cook County, that Charles Hitchcock and Edward Endicott, partners, &c., are justly indebted to the Peoria Starch Manufacturing Company to the amount of seventeen hundred and thirty dollars and sixty-five ($1,730 65) cents, and oath having been also made that the said Charles Hitchcock and Edward Endicott have fraudulently conveyed or assigned their property or effects within two years previous to this date, and that they have fraudulently concealed or disposed of their property or effects within two years prior to this date so as to hinder and delay their creditors, and are about fraudulently to conceal, assign, or otherwise dispose of their property or effects so as to hinder and delay their creditors:

107 And the said C. S. Wilcox, as agent, &c., having prayed an attachment in aid of suit at law, and he having given bond and security, according to the directions of the act in such case made and provided—

We therefore command you that you attach the lands and tenements, goods and chattels, rights, credits, and effects of the said Charles Hitchcock and Edward Endicott, partners, &c., to be found in your county, as shall be of value sufficient to satisfy said debt and costs, according to the said complaint, and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at a term of said superior court of Chicago, to be holden at Chicago, within and for the county of Cook, on the first Monday of June next, so as to compel the said Charles Hitchcock and Edward Endicott, partners, &c., to appear and answer the complaint of said Peoria Starch Manufacturing Company, and that you also summon , as garnishee, to be and appear at the said court on the said first Monday of next, then and there to answer to what may be objected against, when and where you shall make known to the said court how you have executed this writ; and have you then and there this writ.

Witness Thomas B. Carter, clerk of said court, and the seal thereof, at Chicago, in said county, this 30th day of May, A. D. 1867.

THOMAS B. CARTER, *Clerk.*

108 By virture of the within writ of attachment, I did, on this 30th day of May, 1867, levy upon and attach all the right, title, and interest of the within-named defendants, in and to the property described in schedule marked "A," and hereto annexed; and also served this writ by reading to the within-named defendants this 1st day of June, 1867.

JOHN L. BEVERIDGE, *Sheriff,*
By G. FISHER, *Dep'ty.*

$1 80 p'd by pl'ff att'y.

1231⅓ doz. assorted soaps; 600½ lbs. ass't soaps; 221 2/12 doz. ass't pomade; 22 8/12 doz. tooth powder; 324 doz. hair oils; 121 5/12 doz. flavoring extracts; 595 9/12 doz. handkerch'fs extracts; 154 10/12 doz. cologne; 13⅓ doz. cocosine; 15 10/12 doz. ass't cosmetics & washes; 14 5/12 doz. lip & eye salve; 12¾ doz. smelling salts; 6 9/12 doz. rouge; 51 3/12 doz. lily white; 11¾ doz. shaving tablets & cream; 3½ doz. marking ink; 4⅓ doz camphor ice; 5½ doz. castor oil; 24⅓ doz. ass't ink; 60 5/12 doz. perfume baskets & boxes; 410 2/12 doz. ass't combs; 8 doz. needle cases & toilet boxes; 116 8/12 doz. fish lines; 36 3/12 doz. chalk lines; 253 10/12 doz. blueing; 107½ doz. wallets, bags, & pocket books; 24 4/12 doz. mucillage; 190 9/12 doz. pipes; 37 9/12 doz. buckles; 67 7/12 doz. shawl pins; 36 9/12 doz. lead pencils; 30 2/12 doz. conchone; 101 4/12 doz. playing-cards; 19 4/12 doz. pinchers;

109 143 3/12 doz. key rings; 8½ doz. watch chains; 5 6/12 doz. cupps; 400 slate pencils; 8 2/12 doz. pink saucers; 2 8/12 doz. court plaster; 30 9/12 thousand DD caps; 28,000 quill toothpicks; 6 doz. spring balances; 5 3/12 doz. shaving brushes; 184 box. chewing-gum; 121½ lbs. indigo; 149 4/12 doz. pen holders; 15 10/12 doz. memorandum books & pocket albums; 13 2/12 doz. scissors; 5½ reams letter paper; 2 4/12 doz. puff boxes; 20½ doz. mirrors; 44 5/12 doz. & 240½ lbs. ass't twine; 13 8/12 doz. cork-screws; 513 5/12 doz. blacking; 10 lbs. & 35 10/12 doz. mustard; 19½ doz. penknives; 305 gross steel pens; 8½ doz. starch polish; 3 8/12 doz. toilet cases; 9 11/12 doz. pocket brooms; 13 10/12 doz. razor strops; 77 7/12 doz. lamp wicks; 286 4/12 doz. tacks; 40 gross stove polish; 81 9/12 doz. hair brushes; 165 5/12 doz. tooth brushes; 26 7/12 doz. nail brushes; 17 10/12 doz. shaving brushes; 18 3/12 doz. lather brushes; 11 crumb brushes; 3 10/12 doz. shoe-brush tips; 438 3/12 doz. shoe brushes; 33 8/12 horse brushes; 207½ doz. whitewash brushes; 135 11/12 doz.

paint brushes; 4⅓ doz. camel-hair pencils; 10 5/12 doz. stencil brushes; 1 8/12 doz. seam brushes; 4 5/12 doz. brick stripers; 134 doz. marking brushes; 25 4/12 doz. cloth brushes; 27 3/12 doz. brush brooms; 659 7/12 doz. scrub brushes; 7 doz. mane brushes; 6 4/12 wall brushes; 1 1/12 doz. window brushes; 16 8/12 doz. dust brushes; 3 doz. calsomine brushes; 79 doz. stove
110 brushes; 59½ doz. varnish brushes; 66½ doz. sash brushes; 11½ doz. feather dusters; 5 4/12 doz. feather brushes; 3½ doz. picture brushes; 1½ dozen toy brushes; 6 stamp boxes; 10 tobacco pouches; 12 quires sand paper; 6 lanterns; 11 handhew; 8½ doz. chimney cleaners; 1 doz. potatoe mashers; 1 doz. butter stamps; 9 box. wagon grease; 6½ doz. horse cards; 34 1/12 cattle cards; 120 lbs. vavine candles; 230 lbs. assorted nails; 1 1/12 doz. seives; 16 9/12 doz. curry cards, 7 fire shovels; 7⅔ doz. constitution bitters; 4 butcher knives; 12½ doz. teething rings; 35 doz. nipple shields; 42½ doz. ass't. nipples; 5 cigar cases; 63⅜ doz. bow pins & range-snaps; 11 doz. padlocks; 8 1½ doz. hooks, hasps, & staples; 500 balls shoe-wax; 243 5/12 gross matches; 13 5/12 doz. yeast powder; 225 lbs. pepper; 505 lbs. cream tartar; 310 2/12 doz. curry combs; 78 4/12 doz. ass't. spices; 29 2/12 doz. & 229 lbs. ginger; 168 lbs. shoe thread; 3 5/12 doz. tomatoes; 128 5/12 doz. harness oil; 56 lbs. coffee; 123 10/12 doz. ass't. traps; 46 7/12 doz. ass't. bottles; 9½ doz. baskets; 21 8/12 doz. match safes; 34,850 envelopes; 13 box. corks; 82 shelf cases; 1 piano & stool; 6 desks; 8 tables; 2 stoves & pipes; 4 chairs; 3 stools; 1 safe; 1 show case; 2 book & paper cases; 1 scale; 4 ladders; 1 lot store tools; 1 lot samples; 1 truck; 2 stamps; 1 letter press; 4 glass jars; 2 churns; 1 Howe platform scale; 1 lamp; 1 office railing; 1 iron rolling-pin; 6 trunks; 2 valises; 1 block & tackle; 3 sashes; 1 door; 4 casks; 2 hoisting clasps; 72 wooden & 184 paper boxes; shelving, inkstands, &c.

(Endorsed:) Filed Dec. 16, 1868. W'm H. Bradley, cl'k.

111 EXHIBIT "G."

IN THE MATTER OF CHARLES HITCHCOCK & Edward M. Endicott. } In bankruptcy.

Certif'd copy ord'r inj'ct'n ag't sh'ff & his deputies, enjoining from making sale, or from any further proceedings under and by virtue of executions in sh'ff's or his deputies' hands, against the goods, chattels, lands, and tenements, of the said Charles Hitchcock & Edward M. Endicott, served June 26th, 1'67, on T. M. Bradley, dep'ty she'ff, (She'ff Beveridge not in city,) by delivering copy to Bradley, dep'y she'ff, personally, at she'ff's office, by S. H. Tourtellotte, sp'l deputy, & served June 29th, 1'67, on She'ff Beveridge, by delivering copy to him personally, by A. B. Cotes, dep'y.

Certf'd copy order for marshal as messenger, to sell the stock of goods of said H. & E., bankrupts, received July 12, 1'67.

Demand of She'ff Beveridge made under warrant, July 27, 1'67, and failure and refusal to deliver. Had conversed before them both with she'ff and Fisher, one of his deputies, in relation to the goods belonging to H. &. E., which had been levied upon, and they both understood that the marshal had been ordered by the U. S. district court to sell the stock of goods aforesaid.

A. B. COTES.

(Endorsed:) Filed Dec. 16, 1868. W'm H. Bradley, clerk.

112 On this day, to wit, the 21st day of December, in the December term, A. D. 1868, of said court, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

*Cause set for hearing.*

GEORGE W. CAMPBELL, ASSIGNEE, &C., OF Charles Hitchcock and Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO and Hotchkiss Sons. } Chancery.

By agreement of the parties by their solicitors, it is ordered by the court that this cause be set down for hearing upon the pleadings, proofs, and exhibits on file herein.

On the next day, to wit, the 22nd day of December, in said December term, A. D. 1868, of said court, in the record of the proceedings thereof, in said entitled cause, is the following entry, to wit:

GEORGE W. CAMPBELL, ASSIGNEE, &C., OF Charles Hitchcock and Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO and Hotchkiss Sons. } Chancery.

113 Now come the parties by their solicitors, and this cause having heretofore been set down for hearing, after hearing the arguments of counsel, until the hour of adjournment, without concluding the same, the further hearing is postponed until to-morrow morning.

On the next day, to wit, the 23rd day of December, in the said December term of said court, A. D. 1868, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

GEORGE W. CAMPBELL, ASSIGNEE, &C., OF Charles Hitchcock and Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO and Hotchkiss Sons. } Chancery.

Now come again the parties by their solicitors, and after hearing additional arguments of counsel, on motion of the complainant by his solicitor, leave is given him to amend his bill of complaint herein, and after hearing the concluding arguments of counsel the court takes the same under advisement.

114 On this day, to wit, the 4th day of January, A. D. 1870, in the December term, A. D. 1869, of said court in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

*1st decree.*

GEORGE W. CAMPBELL, ASSIGNEE, OF Charles Hitchcock and Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO and Hotchkiss Sons.
} In chancery.

This cause coming to be heard, and the court having considered the pleadings and evidence and heard the arguments of counsel thereon, and being now fully advised in the premises, finds that on the 28th day of May, A. D. 1867, Hitchcock & Endicott, being insolvent, gave to the said Traders' National Bank, who then & there had reason to suspect and believe such the insolvency of said Hitchcock & Endicott, a promissory note, payable on demand, for six thousand seven hundred and seven dollars and forty-three cents, together with a power of attorney thereto attached, authorizing said bank to confess judgment upon said note at any time after the maturity thereof; that, on the 29th day of May, A. D, 1867, said Traders' National Bank appropriated towards the payment of said note certain money of said Hitchcock & Endicott, then in
115 their hands, with the consent of said Hitchcock & Endicott, the same being a payment made by the latter when insolvent, to the belief or knowledge of said bank, and thereupon demand having been made said bank caused judgment to be entered up against said Hitchcock & Endicott upon the note aforesaid, for the amount thereof, less the payment aforesaid, together with attorneys' fees & costs, and caused execution to be issued thereon, and to be delivered to the then sheriff of Cook County to execute, which said execution was levied by said sheriff upon the goods & chattels of said Hitchcock & Endicott; that subsequently to such levy certain monies of said Hitchcocd & Endicott came to the hands & possession of said bank, and the said bank procured the levy thereon of the execution aforesaid; that the goods & chattles of said Hitchcock & Endicott were finally sold upon said execution, and a certain other & previous execution in favor of Hotchkiss Sons, and that out of the proceeds of such sale, deducting the expenses thereof, and out of the monies, also levied on as aforesaid by said sheriff, the full amount of such judgment and costs so rendered in favor of the said bank as aforesaid, was paid over to said bank by the said sheriff of Cook County. And the court also finds that the payment upon the note aforesaid, and the note aforesaid and the judgment thereon rendered as aforesaid, were, and each of them are,
116 void, because in contravention of the bankrupt law of the United States in that behalf; and it also appearing that Hotchkiss Sons are non-residents of the State of Illinois, and have not been served with process herein.

It is therefore ordered, adjudged, and decreed by the court that the bill of complaint herein be, and the same is hereby, dismissed as to said Hotchkiss Sons, at the costs of said complainant.

And it is further ordered, adjudged, and decreed that the said complainant is entitled to have and recover of the said defendant, The Traders' National Bank of Chicago, the amount of the payment so as aforesaid made upon said note, together with interest thereon from the 29th day of May, A. D. 1867; and also an amount equal to the amount of said judgment & costs so rendered in the circuit court of Cook County, as aforesaid, so delivered to them by the said sheriff as afore-

said, together with interest thereon from the said 29th day of May, A. D. 1867; and that this cause be, and it hereby is, referred to Henry W. Bishop, master in chancery of this court, to ascertain and report to this court as speedily as possible, from the evidence already taken, and such other evidence as may be taken herein, the amount of such payment and interest, and of such judgment and costs and interest, and the aggregate amount thereof, and any other facts in his opinion pertinent to the reference hereof.

117 *Master's report.*

Circuit court of the United States, northern district of Illinois, in chancery.

GEORGE W. CAMPBELL, ASSIGNEE OF Hitchcock & Endicott,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO.

In pursuance of an order of said court, entered in said cause on the fourth day of January, A. D. 1870, by which it was referred to the undersigned, a master in chancery of said court, to ascertain and report on the evidence already taken, and on such other evidence as might be taken therein, the amount of payment mentioned in said order, and interest on the same, and of the judgment and costs and interest mentioned in said order, and the aggregate amount thereof, and other facts in his opinion pertinent to the reference hereof, I, H. W. Bishop, jr., master as aforesaid, hereby report:

That I was attended by M. W. Fuller, esq., solicitor for the complainant, who produced before me all of the testimony taken in said
118 cause, and by Mattocks & Mason, solicitors for the defendant.

That I find, upon an examination of said testimony, there was paid on the 29th day of May, A. D. 1867, upon the note referred to in said testimony, to the Traders' National Bank, defendant herein, the sum of three hundred and twenty-five dollars and twenty cents, which, with interest from the date of said payment to the date of this report, March 20th, 1870, amounts to the sum of three hundred and eighty dollars and five cents. Further, that in the cause referred to in said bill and decree of The Traders' National Bank vs. Hitchcock & Endicott, judgment was rendered in the circuit court of Cook County, Illinois, on the 29 day of May, A. D. 1867, for the sum of six thousand four hundred thirty-eight dollars and twenty-three cents, including six dollars costs, which last sum, with interest from said date of judgment to the date hereof, amounts to the sum of seven thousand five hundred and twenty-three dollars and seventy cents. And that the said two sums, and interest as aforesaid, to this date, amount, in the aggregate, to the sum of seven thousand nine hundred and three dollars and twelve cents.

And I further report that it also appears from said testimony that out of the proceeds of sales made in said case by John L. Bever-
119 idge, then sheriff of Cook County, there was deposited with said Traders' National Bank, on special deposit, the amount of their claim upon execution, and a certificate of deposit issued to Gustavus Fisher for the sum of six thousand five hundred dollars, and signed by J. O. Rutter, pres't, as appears from the testimony of Thomas P. Tall-

man, taken before me, a copy of which said Tallman attached to his testimony, which I hereby return with this report, which testimony was taken before me on the 16th day of March, A. D. 1870, the said Tallman having been by me first duly cautioned and sworn.

All of which is respectfully submitted.

HENRY W. BISHOP, JR.,
*Master in Chancery of the United States Circuit Court,*
*Northern District of Illinois.*

[5-cent stamp cancelled.]

CHICAGO, *March 21st*, 1870.

Master's fees, $20 00.

120 *Deposition of Thomas P. Tallman.*

Examined on behalf of the defendant, by John Mattocks, esq.

Int. 1. What is your business?

Ans. 1. I am cashier of the Traders' National Bank of Chicago.

Int. 2. How long have you acted in that capacity?

Ans. 2. Since the organization of the bank, about four years ago this spring.

Int. 3. Are you acquainted with Gustavus Fisher, former deputy sheriff of Cook county, who was sworn as a witness in this cause?

Ans. 3. I am.

Int. 4. Will you state whether or not the said Fisher, as deputy sheriff, ever deposited any money in your bank; and if so, what such deposit, if any, was made on account of, and all the circumstances connected therewith?

Ans. 4. There was such a deposit made by said Fisher, as deputy sheriff, on February 21, 1868, amounting to six thousand five hundred dollars, the same being the avails of the sale made by said Fisher,
121 as deputy sheriff, in the suit of The Traders' National Bank against Hitchcock and Endicott; this amount was the sum realized from said sale after deducting the sheriff's expenses & costs.

Int. 5. What arrangement, if any, was made between your bank and said Fisher in relation to said money?

Ans. 5. Said Fisher deposited said money, as deputy sheriff, and received therefor from said bank a certificate of deposit, an exact copy of which is herewith furnished and made a portion of this answer. The arrangement made with said Fisher was that the money should remain with said bank as a special deposit, subject to the final result of the suit then pending against said bank in the United States court in Chicago, being the suit of Campbell, assignee, &c., against said bank, the understanding being that said money might be used by said bank until said suit was decided, and that it should then be returned by said bank in case said suit was decided in their favor; but if against them, then the said money to abide the order of the court in the premises.

Int. 6. Do you still hold said money subject to the arrangements then entered into between Fisher and your bank?

122 Ans. 6. We do.

THO'S P. TALLMAN.

Subscribed and sworn to before me this 16th day of March, A. D. 1870.

H. W. BISHOP, JR.,
*Master in Chancery of the Circuit Court*
*of the United States, Northern District of Illinois.*

[Copy.]

*Certificate of deposit.*

$6,500. TRADERS' NATIONAL BANK,
No. 44 CLARK STREET,
*Chicago, Feb.* 21, 1868.

Gustavus Fisher, dep'ty sheriff, has deposited in this bank the sum of sixty-five hundred dollars, in current funds, to the credit of himself, and subject to his order on return of this certificate, payable in like funds.

J. O. RUTTER, *Pres't.*

[5-cent stamp cancelled.]

No. 930.

(Written across the face:) Sixty-five hundred doll's.

(Endorsed:) Filed March 24, 1870. W'm H. Bradley, cl'k.

123 On this day, to wit, the 24th day of March, A. D. 1870, the parties, by their solicitors, filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

*Stipulation.*

In United States district court in & for northern district of Illinois.

GEORGE W. CAMPBELL, ASSIGNEE, &C., complainant,
*v.*
THE TRADERS' NATIONAL BANK OF CHICAGO.

It is hereby stipulated that the decree hereinbefore—on the 4th day of January, A. D. 1870—entered was, by consent, so modified at the request of the defendant as to permit testimony to be taken before the master, and that the testimony reported by the master under date Mar. 1, 1870, was taken and reported by like consent, the complainant not to be prejudiced thereby, and time to file exceptions to said master's report is also waived, this stipulation being confined to the points above indicated, and not to be construed as waiving any right of appeal of said defendant.

MATTOCKS & MASON,
*Sol'rs for Traders' National Bank.*

124 M. W. FULLER,
*Sol'r for Compl't.*

(Endorsed:) Filed March 24, 1870. W'm H. Bradley, cl'k.

On this day, to wit, the twenty-sixth day of March, in the adjourned March term, A. D. 1870, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

*Final decree.*

GEORGE W. CAMPBELL, ASSIGNEE OF HITCHCOCK and ENDICOTT, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } Chancery.

This cause coming on to be heard upon the report of Henry W. Bishop,

man, taken before me, a copy of which said Tallman attached to his testimony, which I hereby return with this report, which testimony was taken before me on the 16th day of March, A. D. 1870, the said Tallman having been by me first duly cautioned and sworn.

All of which is respectfully submitted.

HENRY W. BISHOP, JR.,
*Master in Chancery of the United States Circuit Court,*
*Northern District of Illinois.*

[5-cent stamp cancelled.]

CHICAGO, *March 21st*, 1870.

Master's fees, $20 00.

120 *Deposition of Thomas P. Tallman.*

Examined on behalf of the defendant, by John Mattocks, esq.

Int. 1. What is your business?

Ans. 1. I am cashier of the Traders' National Bank of Chicago.

Int. 2. How long have you acted in that capacity?

Ans. 2. Since the organization of the bank, about four years ago this spring.

Int. 3. Are you acquainted with Gustavus Fisher, former deputy sheriff of Cook county, who was sworn as a witness in this cause?

Ans. 3. I am.

Int. 4. Will you state whether or not the said Fisher, as deputy sheriff, ever deposited any money in your bank; and if so, what such deposit, if any, was made on account of, and all the circumstances connected therewith?

Ans. 4. There was such a deposit made by said Fisher, as deputy sheriff, on February 21, 1868, amounting to six thousand five hundred dollars, the same being the avails of the sale made by said Fisher,
121 as deputy sheriff, in the suit of The Traders' National Bank against Hitchcock and Endicott; this amount was the sum realized from said sale after deducting the sheriff's expenses & costs.

Int. 5. What arrangement, if any, was made between your bank and said Fisher in relation to said money?

Ans. 5. Said Fisher deposited said money, as deputy sheriff, and received therefor from said bank a certificate of deposit, an exact copy of which is herewith furnished and made a portion of this answer. The arrangement made with said Fisher was that the money should remain with said bank as a special deposit, subject to the final result of the suit then pending against said bank in the United States court in Chicago, being the suit of Campbell, assignee, &c., against said bank, the understanding being that said money might be used by said bank until said suit was decided, and that it should then be returned by said bank in case said suit was decided in their favor; but if against them, then the said money to abide the order of the court in the premises.

Int. 6. Do you still hold said money subject to the arrangements then entered into between Fisher and your bank?

122 Ans. 6. We do.

THO'S P. TALLMAN.

Subscribed and sworn to before me this 16th day of March, A. D. 1870.

H. W. BISHOP, JR.,
*Master in Chancery of the Circuit Court*
*of the United States, Northern District of Illinois.*

[Copy.]

*Certificate of deposit.*

$6,500. TRADERS' NATIONAL BANK,
NO. 44 CLARK STREET,
*Chicago, Feb.* 21, 1868.

Gustavus Fisher, dep'ty sheriff, has deposited in this bank the sum of sixty-five hundred dollars, in current funds, to the credit of himself, and subject to his order on return of this certificate, payable in like funds.

J. O. RUTTER, *Pres't.*

[5-cent stamp cancelled.]

No. 930.

(Written across the face:) Sixty-five hundred doll's.

(Endorsed:) Filed March 24, 1870. W'm H. Bradley, cl'k.

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*Stipulation.*

In United States district court in & for northern district of Illinois.

GEORGE W. CAMPBELL, ASSIGNEE, &C., complainant,
*v.*
THE TRADERS' NATIONAL BANK OF CHICAGO.

It is hereby stipulated that the decree hereinbefore—on the 4th day of January, A. D. 1870—entered was, by consent, so modified at the request of the defendant as to permit testimony to be taken before the master, and that the testimony reported by the master under date Mar. 1, 1870, was taken and reported by like consent, the complainant not to be prejudiced thereby, and time to file exceptions to said master's report is also waived, this stipulation being confined to the points above indicated, and not to be construed as waiving any right of appeal of said defendant.

MATTOCKS & MASON,
*Sol'rs for Traders' National Bank.*

124 M. W. FULLER,
*Sol'r for Compl't.*

(Endorsed:) Filed March 24, 1870. W'm H. Bradley, cl'k.

On this day, to wit, the twenty-sixth day of March, in the adjourned March term, A. D. 1870, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

*Final decree.*

GEORGE W. CAMPBELL, ASSIGNEE OF HITCHCOCK and Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } Chancery.

This cause coming on to be heard upon the report of Henry W. Bishop,

master in chancery, to whom said cause was referred on the fourth day of January, A. D. eighteen hundred and seventy, filed herein on the twenty-fourth day of March, A. D. eighteen hundred and seventy, and upon the stipulation of the parties hereto by their counsel herein filed on said twenty-fourth day of March, A. D. eighteen hundred and seventy, waiving time for filing exceptions to said report, and no
125 exceptions to said report of said master having been filed herein, the said defendant offering no objection thereto, but relying upon the defence heretofore by said defendant interposed in this cause, it is ordered and decreed by this court that the said report of said master, so filed as aforesaid, be, and it is hereby, in all things confirmed.

And thereupon, on motion of Melville W. Fuller, of counsel for the complainant herein, the court, having examined said report, and being now fully advised in the premises, and finding that the said complainant is entitled to have and recover of and from the said defendants the sum of seven thousand nine hundred and three dollars and twelve cents, ($7,903 12,) with interest thereon from the date of the entry hereof, together with the costs of this suit to be taxed—

It is ordered, adjudged, and decreed that the said complainant do have and recover of the said defendant, The Traders' National Bank of Chicago, the said sum of seven thousand nine hundred and three $\frac{12}{100}$ dollars, with interest thereon from the date of the entry hereof, together with the costs of this suit; and that, if said defendant fail to pay said principal sum, interest, and costs to said complainant so into court upon this decree, within ten days from this date, then the said
126 complainant shall be entitled to a writ of fieri facias for the collection thereof as in case of judgment at common law, and the said writ is directed to be issued accordingly.

And thereupon defendant prays an appeal to the circuit court.

127 *Depositions for complainant.*

In U. S. cir. c't nor. dist. of Ill.

GEORGE W. CAMPBELL, ASSIGNEE, &C.,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO et al. } In chancery.

It is hereby stipulated & agreed that, upon the hearing of the above cause, either party may introduce such documentary evidence, subject to such objections as may exist thereto, as they or either of them may see fit.

Twenty-four hours' notice shall be given of such documents as it is proposed so to introduce.

M. W. FULLER,
*Compl'ts' Sol'r.*
MATTOCKS & MASON,
*Solicitors for Traders' National Bank.*

CHICAGO, *Aug.* 1, 1'68.

128 In the United States district court, northern district of Illinois.

GEORGE W. CAMPBELL, ASSIGNEE, &C.,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO et al. } In chancery.

It is hereby stipulated by and between the parties to the above-enti-

tled suit that all testimony taken in said cause before J. Howland Thompson, notary public, shall be certified to and filed in said cause, and shall be treated as if taken by the master in chancery, to whom said cause was referred.

M. W. FULLER,
*Compl'ts' Sol'r.*
MATTOCKS & MASON,
*Solicitors for Traders' National Bank.*

129 Depositions of Charles Hitchcock, George W. Wood, Gustavus Fisher, Edward G. Asay, John L. Beveridge, and Charles Hitchcock, (recalled,) taken on the part of the complainant in a cause now pending in the United States district court for the northern district of Illinois, wherein George W. Campbell, assignee, &c., is complainant, and The Traders' National Bank of Chicago and others are defendants, pursuant to and under the stipulations hereto annexed, by J. Howland Thompson, notary public.

On the 25th day of July the said *George W. Wood*, a witness on behalf of the complainant, being first duly sworn, deposed and testified as follows:

*Deps. of Cha's Hitchc'k.*

My name is Charles Hitchcock. I have lived here some ten years; been in business from 1861 to May, 1867; my business was groceries & druggist goods, brushes & miscellaneous goods. From Sept., 1866, up to May, 1867, I think the firm was Hitchcock & Endicott—Charles Hitchcock & Edward M. Endicott. The goods were valued on May 29th, 1867, at $27,000 or $28,000, I think. The full amount named in the inventory then was, I think, between 27,000 & 28,000. The
130 inventory contained the just value of the goods, as near as could be. The goods were taken possession of by Dept. Sheriff Fisher. He came in there with an execution in favor of The Traders' National Bank; the execution was issued on a judgment obtained by confession. Edward M. Endicott executed the note on which judgment was confessed. I don't know when the note was signed, nor when Mr. Endicott signed the warrant of attorney. I signed the warrant of attorney after he did. It was given for two notes that the bank held against our firm. I couldn't say when they matured; they were not due at the time this note was given. I think they were for $1,500 each, and for two other notes to the bank, endorsed by William F. Endicott. They were our firm notes, one for $1,000 and the other, I think, for $500. I think one of them was due—for $500; the other was not. I think the $500 note was past due. I think about $2,200 for drafts on country customers of ours which the bank had taken as cash, which, they claimed, had not been returned paid. Collections had not come in. I never had a statement of just what made up the amount of the note. The only knowledge I had of the payment of these drafts was from the sheriff, saying he had received money from the bank from those collections to apply on the execution. William T. Endicott was a brother of Edward
131 M. Endicott. I understand him to be a director in the bank at that time & a stockholder. We had no other paper held by the bank that was past due at the time this note was given, except the $500 note, even if that was, I am not positive. My impression was that it was due, and Mr. W. T. Endicott would look after it. We had given

a judgment note before this time to Hotchkiss Sons. The judgment note was given as security, & not to be used against us until we could hear from Hotchkiss Sons. They tried to get us to pay it, but we couldn't. It was given two or three months before the one to The Traders' National Bank. I presume it was on demand. The goods were sold at auction by Fisher, dept. sheriff. I was asked twice, I think once by Smith & once by Mr. Mattocks. Mr. Smith is the teller in the bank; Mr. Mattocks is the bank's attorney. They requested me to do so the 28th of May, the day before the judgment was entered up. A suit had been commenced before the 28th of May by William Gates ags't us; I think it was in the month of May, for some $800 perhaps.

132 Cross-examination.

I think our liabilities on the 28th day of May was some $33,000 or $34,000; the schedule on file in the bankrupt court will show the exact amount. The goods were inventoried in said schedule at their bill, cost price, & freight added, I think. In selling goods in Chicago, we were accustomed to add for profits from three to twenty-five per cent. over bill cost & freight. I don't know what the inventory, at Chicago prices, would be; we inventoried at cost. In estimating the stock of goods at $27,000 or $28,000, we put in all the assets of the firm. The execution levied by Fisher in favor of the Traders' National Bank, is the only one that I know of being levied. It was the only execution or attachment that I know of. I had not, previous to giving the note, stated to the Traders' National Bank that our assets were more than sufficient to meet all our liabilities. I did cause a statement to be furnished to J. O. Rutter. That statement was a copy by the book-keeper of the balance sheets the 1st of Jan'y. J. O. Rutter was president of the bank during that year. This statement was furnished somewhere about the middle of May. That statement was furnished to Mr. Rutter at his own request for a special purpose, that he might answer

133 inquiries in regard to our firm, made by B. L. Fahnestock, Fortune & Co., of Pittsburgh. Mr. Rutter told me he had a letter from them, making inquiries about us; that he wanted to answer. I think he told me early in the month—some days before this statement was made. I had no more conversation with Mr. Rutter concerning our financial standing than the statement embraced. When he spoke to me about this inquiry we had a conversation, & that is what caused the statement. Mr. Rutter came to the store, and I was busy, & he asked me to come up there. I went; our matters were not discussed any further than what he should say to Mr. Fahnestock. If I would furnish him a statement of the way we stood, so that he could answer any inquiries made about us, it would be for our benefit. The object was that it would be beneficial to us to furnish him a statement. The statement referred to was furnished. I do not remember that I ever had any other conversation with Mr. Rutter about our financial standing; I think not. I couldn't say whether the statement furnished Mr. Rutter was a true statement or not; it was furnished by the book-keeper from the books. I never examined it, and supposed it was correct. I can't say whether that statement has proved to be a correct statement of the

134 affairs of our concern. It has not been examined. I never told Mr. Rutter or anybody else that the book-keeper had made a fraudulent statement and run away. I never said anything about his having made a fraudulent statement; I don't think my book-keeper did make a fraudulent statement. I never told anybody that our book-keeper embezzled money from our concern; I don't think he

did, from anything I have ever seen; I don't think I ever had any conversation with any person about our book-keeper embezzling money from our concern. I don't think I ever wrote to anybody that money had been embezzled from our concern. I don't think I ever wrote to anybody that money or goods had been embezzled from our concern. We may have conversed among ourselves about shortage on the goods, but I don't think I conversed with anybody outside about embezzlement of money or goods, unless with one person on the shortage. This conversation was with William F. Endicott. This conversation was a week before the judgment was entered, and before his brother, E. M. Endicott, came back from the east. Our clerk or book-keeper left suddenly about the 20th of May. This statement was handed to Mr. Rutter by this book-keeper. This conversation with Wm. F. Endicott was after the departure of the book-keeper.

Q. State what the conversation with Mr. Endicott was.

(Objected to.)

135 A. I told Mr. Endicott that the book-keeper had suddenly left, and that a statement he had furnished me showed that there was a discrepancy of $10,000 in his January statement against us. The last statement showed that the January statement was $10,000 more in our favor than it ought to have been. The book-keeper left his family here & went over into Michigan; it's commonly called running away, I believe. The substance of the conversation with Mr. Endicott was as to why his brother didn't come home. I wanted him; he had been gone two months; I telegraphed to him, & got William Endicott to telegraph to him. He was my partner. I think he returned the morning of the 28th of May, 1867. I don't know whether there was really such a deficit on the 1st of January, 1867, of $10,000. I don't know whether there was a deficit in our assets on the 28th day of May, 1867, of $10,000. This conversation with William F. Endicott took place at his store I think, about the 23rd of May. He said he telegraphed the same day. I had no conversation with Mr. Rutter in regard to the matter at all. I saw him at our store during the sale on execution, but had no conversation with him. There was a balance in the bank at the time of giving this note. Mr. Endicott, the partner, gave a check for it. It was about $300. After this conversation with Mr. Endicott, I had no

136 conversation with Mr. Rutter; I know I did not have. I think I had no conversation with Mr. Rutter about our financial affairs after the conversation with William F. Endicott. After this conversation with Endicott the Traders' Bank demanded of our firm payment of the amounts which we owed them. I can't remember what answer we gave to their demands. We didn't owe them anything that was due, & therefore considered that we didn't owe them anything. The Traders' Bank, at the time of calling on me, gave no reason why they made this demand on me—not that I remember. Smith, one of the clerks in the bank, called on me on the afternoon before the levy was made, I think. It seems to me that he brought a written demand, & I gave it back to him again. I don't recollect any conversation at all in regard to the matter. I never had any conversation with Mr. Rutter, or any agent or attorney of said bank, in which I intimated that our firm was insolvent.

Ques. Had you any knowledge or belief that at the time the said judgment was entered up, or the said note was given, that your firm were insolvent.

(Objected to as leading and incompetent.)

Ans. No, sir; I never told any one at or about that time that our firm

was insolvent. I supposed we were; I had no occasion to mention whether we were or not.

Ques. At the time you executed that judgment note, did you
137 do so with the intention of giving said bank a preference?

(Objected to as leading.)

Ans. When I signed the warrant, I signed it under the impression unless I did I would be sent to the lockup. I had no preferences that I know of.

Ques. When you executed the judgment note, or warrant of attorney, did you intend to give the Traders' Bank a preference?

(Objected to as incompetent.)

Ans. I didn't execute the judgment note; I didn't execute the warrant of attorney with any such intention; I never had any conversation with the bank or its employees in which I agreed to give said bank a preference in the collection of their indebtedness ag'st us. I never had any conversation with the bank about giving them a preference.

Direct ex. resumed:

I should think we had been doing business with the Traders' Bank about six months. We had two accommodation notes with that bank of $1,500 each. We had a credit for three thousand dollars during this period. After furnishing the statement spoken of in my cross-examination, no money was advanced to the firm on the strength of it. All advances of over the three thousand were made upon our coun-
138 try drafts, deposited as cash, at a discount. Our clerk who ran away did not do so on account of being a defaulter to us. He informed the day before he left of an error in my statement of ten thousand dollars by which we were ten thousand dollars worse off. The clerk informed me of this deficit of $10,000 several days before the judgment note was given. We had prior to this time given a judgment note to Hotchkiss Sons. Hotchkiss Sons had asked us to pay the indebtedness for which we gave them this judgment note several times. They had not after the note was given, nor did they ask for payment of the note. I could'nt tell whether I had any suspicions of the insolvency of the firm of Hitchcock & Endicott; I did not know of this deficit of $10,000; I supposed we were solvent & had enough to pay our debts with. I believe I informed W'm F. Endicott of this alleged deficit of ten thousand dollars. I think I told him what the book-keeper said. I did not examine myself the books to see how our affairs stood. It would take too long to examine the books, it would take two months to do it. I telegraphed to my partner to come here as soon as the clerk delivered this letter, stating this deficit. This was five days, perhaps, before the judgment note was given. At that time I did not
139 know how much our concern owed, for the reason that I hadn't examined to see; I didn't know what was due to the firm at that time. I didn't know how much stock we had on hand. The Traders' Bank wanted us to pay our notes which they held & which were not due. That demand for payment was made before the judgment note was given. The judgment note was given that same evening. A request was made before that evening to us to give a judgment note by Mr. Smith. When this note was brought to me, I evaded signing it by going out of the back door. Mr. Smith demanded the payment of those notes which we owed the bank. I refused, considering, as they were not due, we did not owe them. After that Mr. Smith, & Mr. Mattocks, & Mr. Williams came down. Mr. Smith introduced Mr. Mattocks as the att'y of the bank. Mr. Mattocks introduced Mr. Williams as deputy

sheriff. They brought a judgment note with them filled out but unexecuted. Mr. Mattocks told me I must sign that note or Mr. Williams would arrest me. They asked for Mr. Endicott; Mr. Mattocks told Mr. Endicott he wanted he should go with him down to his brother's store.

Mr. Mattocks told Mr. Williams to take care of me and he would
140 go with Mr. Smith & Mr. Endicott, & they went away. Mr. Williams was there with me a few minutes, and then I went down the back stairs & left him. He didn't know that I was going to leave. It was along towards tea time; I went out on the street, & did not go home till 8 or 9 o'clock. When I got home I found Mr. Smith & Mr. Endicott there. Mr. Smith presented me the note & demanded the signature. I did not see Williams; he was not in my house. I did not see him out doors. I signed it. It was signed by Mr. Endicott in both places, & I signed my own individual name to the warrant of att'y. At that time I had no suspicion that the firm of Hitchcock & Endicott were not solvent. I supposed we had enough to pay our debts with. I didn't read the note nor the warrant of att'y; I didn't suppose judgment would be entered up. I didn't suppose anything about it, but just signed it. I supposed Williams had process with him in the afternoon to arrest me. It occurs to me now that they threatened to arrest me for obtaining money fraudulently from the bank. I don't think there was any reasons given when they asked me for a judgment note, exeept the suppqsition of fraud.

Ques. Did you, at the time of signing this warrant of att'y, know that judgment could be confessed on the note by virtue thereof.

(Objected to.)

141 I supposed it could be.

Ques. Was not the judgment note given to Hotchkiss Sons given as a mode of security?

(Objected to as irrelevant and improper.)

Ans. It was. It was given as a security while we had correspondence with Hotchkiss Sons in regard to the debt.

Ques. Was not the judgment note you gave to the Traders' National Bank intended as security?

(Objected to.)

Ans. I suppose it was.

Ques. Do you not, in fact, know, Mr. Hichcock, that if one creditor hold a security which others do not, it is a preference?

Ans. It is.

Ques. Examine papers now shown you, marked A, B, & C, & which you have just handed me, & state what they are?

Ans. A is the letter from the book-keeper explaining that he had found an error in the statement of $10,000; B is the statement with memorandum; C is the figuring from which the statement was drawn & showing the error.

(Papers here handed the master & are hereto annexed, marked Exhibits A, B, & C.)

I telegraphed for my partner to come back because the book-keeper had gone away, and showing the statement left me in rather a confused situation; I don't know that they claimed that they were entitled to a judgment note.

142 Ques. Explain what you mean when you say that you did'nt sign this judgment note with a view to give the Traders' Bank a preference.

Ans. I signed the note because I was compelled to do that or be arrested. I suppose I must have known I was giving the Traders' Bank a preference when I signed it. It was not intentional.

Ques. Did Smith or Endicott, your partner, have any process with them at the time you signed that note?

(Objected to.)

Ans. I don't know that they had anything but the note. Neither of them used any threats—only a demand. Mr. Smith was the only man that had anything to say. I don't know what conversation had taken place. It didn't amount to much, of course. The substance of it was that I must sign the note or take the consequences. I didn't see any process to read it. All that I saw was what the att'y had when they were down there. I didn't see any papers only at the store. When they came down there first I didn't see any papers there to read them. I think I saw papers but I can't tell what. I supposed I saw what they said they had—the note for me to sign, and the paper the sheriff had to arrest me. When Mattocks & Smith, & my partner, Endicott, went down to my partner's brother's store, I was left in the custody of the sheriff. The sheriff had read no paper to me at that time.

143 My partner, Endicott, put into our business $9,500. He said he got it. Part of it was his own, and part of it came from his father. I have no means of knowing anything about it. I don't know that his father was interested in the Traders' Bank. When Smith said I must sign the note or take the consequences, I don't think he mentioned any consequences.

Ques. Examine statement, marked B, that shows a balance of $12,000 in your favor. When you were informed that there was an error of ten thousand dollars ag'st you, so that you had but a margin of $2,500, or a few hundred dollars over, putting your stock on hand at its invoice price, did you then entertain any suspicion that you could not meet your mercantile paper with promptness & regularity?

(Objected to as leading, irrelevant, & improper.)

Ans. I didn't think that we could meet our paper promptly & regularly. I couldn't believe that that statement was correct.

Ques. Did you have any idea that the financial condition of the firm was such as to require an extension, or as to prevent the prompt payment of your notes as they became due? Did you have any idea that your business was not as prosperous as you had been led to believe? Did you have any idea that you might be compelled to stop or

144 fail, or that you were in any financial embarrassment whatever?

(Objected to, being leading, inferential, inclusive, irrelevant, and improper, & argumentative, & calculated to instruct the witness.)

Ans. Assuming the statement of the error to be correct, I did believe all those things.

Ques. Were your opinions on that subject modified by the demand made on you by the Traders' Bank to pay them money before it became due? Did that movement of theirs look to you like a tendency to financial embarrassment on the part of your firm?

(Objected to for the above reason.)

Ans. It did.

Ques. Did you entertain the idea, at that time, that your firm would probably be compelled to fail?

(Objected to as above.)

Ans. I entertained the idea that they would make us trouble, of course. I supposed we had enough to pay our debts with.

Ques. When you signed the judgment note, Mr. Hitchcock, & after you knew that process was out for your arrest, did you then suppose that the firm of Hitchcock & Endicott could go on with their business without interruption?

Ans. I don't know as I gave the matter much of any supposition at all at that time. *I* was all done in a couple of hours—the whole of it.

Ques. Did you sleep well that night?

145 (Objected to as above)

Ans. I don't recollect. I have never seen the judgment note since the execution was put into the store early the next morning. Upon recollection I know that demand was made upon the note next morning after which the execution was put upon the store.

Ques. Were you very much astonished when demand was made upon that note?

(Objected to as irrelevant.)

Ans. I did not suppose it would be demanded. I don't know why. I have no particular reason to give.

Ques. When you say you believe the concern had enough to pay its debts, do you mean to be understood that you believed that it could meet its commercial paper regularly as it matured?

(Objected to.)

Ans. No, sir.

Ques. Had any suit been commenced against Hitchcock & Endicott before the judgment note to the bank was given; and if yea, how many?

Ans. Yes; one by William Gates. I do not remember that there were any others before that, *these was* about the time.

Ques. Was there any before giving the judgment note in question—commercial paper of yours overdue and unpaid; if yea, what and

146 when did the same become due?

Ans. In the fore part of May there was a note due James S. Kirk & Co., which was not paid. It was perhaps due about the 10th of May. There was another of about $250 due Henry Levy & Co., of New York, in the early part—nearly the first of May. There was a hundred dollars at Greenbaum & Forman. It was an acceptance. I think it was about the middle of May.

Ques. Were these, or either of them, protested for non-payment.

Ans. I think they were. I supposed they were.

Ques. Had these, or either of them, been overdue three weeks? If either which? I mean three weeks before the giving of the judgment note.

Ans. I think one of them had been—the one due Henry Levy & Co.

Ques. Had any account which you owed matured before this time; and if so, to what extent?

Ans. There had quite a number. I do not know as I can give the amount.

Ques. Previous to the giving of this judgment note, had any of your paper matured and been extended; and if yea, to what extent?

Yes. Yes; for some time previous to that, we had had repeated extensions of that kind.

Ques. For how long had that state of things continued?

Ans. More or less for three months.

147 Ques. Did you discover that there was an error of $10,000 as alleged by the clerk?

Ans. No.

Ques. Have you discovered that you were insolvent at the time of giving the judgment note?

Ans. I have become satisfied in my own mind for various reasons, that there was a deficiency as stated by the book-keeper.

Ques. What do you mean when you use the word "insolvent?"

Ans. When I use the word "insolvent" in regard to our situation, I

considered that we were solvent as long as our assets footed up as much as we owned.

Ques. You did not mean to assert then your ability to meet your commercial paper as it matured?

Ans. I did not.

Ques. What do you mean when you say that though the giving of the judgment note was a preference it was "unintentionally done?"

Ans. I meant that I was compelled to do it under fear.

Ques. I understand you to mean, then, that you intended to give a preference when you signed the warrant of attorney—but that you did it to avoid being held in custody.

Ans. I supposed I could not sign it without giving a preference. I considered myself in the hands of the sheriff—and I did not want
148 to be locked up, although I had gone off and left him.

(By agreement of parties, the last thirteen questions are understood as standing objected to as incompetent, irrelevant, leading, and improper.) CHARLES HITCHCOCK.

EXHIBIT A.—*Deposition of Charles Hitchcock.*

MY DEAR MR. HITCHCOCK: I have not the courage to meet all the troubles in consequence of my indebtedness to ever so many creditors, & then also in consequence of what I told you yesterday. I am off! God only knows where I shall go, as I have no money; however, I shall write you in a day or two & let you know, & shall also send you a sworn affidavit to exculpate you & Mr. Endicott, & that really up to yesterday or to-day you did not know how matters stood, but believed, as I did, in the statement I rendered to Mr. Rutter.

God be with me! Pray for me.

If my family should need a few dollars in the course of a week or two, will you let them have it? & God will bless you.

This is the last favor asked by

Yours, very truly, but unhappy,

THEODORE HEMPEL.

149 I shall write more fully when I get to a safe place.

But please do also defend me whenever you may have a chance. With all my faults, I have at least been honest, & that you know, &, I guess, nobody doubts.

I turn over a new leaf to-day & lead henceforth another life.

As soon as I possibly can, I shall send for my family.

Good bye, T. H.

150 EXHIBIT B.—*Deposition of Charles Hitchcock.*

| | | |
|---|---|---|
| Merchandise on hand | | $31,605 44 |
| Drs. on m'd'se ledger | | 6,299 95 |
| Cash on hand | | 6 00 |
| " in bank | | 6 80 |
| Drs. on cash ledger | | 4,858 97 |
| | | 42,777 16 |
| We owe on m'd'se ledger | $1,830 77 | |
| " cash ledg. upon ac's | 7,417 50 | |
| " bills pay | 20,949 83 | |
| | | 30,198 00 |
| | | 12,579 16 |

As rendered to J. O. Rutter, pres't.

* On attached memorandum, it will be seen that in adding, I made a mistake of $10,000 00; hence the erroneous statement.

The above statement was made by drawing off from trial balance all actual accounts, leaving out freight, expense, m'd'se, salary, &c., &c.

I stated to Mr. Rutter about C. Hitchcock's & E. M. Endicott's private & stock ac's.

I had not done so, viz., balanced & transferred, but it was to be done as I said & would be correct.

The whole statement is correct with the exception of the $10,000 00.

T. HEMPEL.

151 EXHIBIT C.—*Deposition of Charles Hitchcock.*

152 *Dep. Geo. W. Wood.*

George W. Wood.

On the 28th day of July, 1867, George W. Wood, a witness on behalf of the complainant, being first duly sworn, deposed and testified as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is George W. Wood; age, 36; residence, Chicago; and I am a merchant in druggist goods, brushes, notions, &c. I have been in this business about three years.

Int. 2. Were you acquainted with the firm of Hitchcock & Endicott? If yea, what was their business; where did they carry it on; and up to what time?

Ans. I was acquainted with the firm of Hitchcock & Endicott. They carried on their business in Chicago. It was in grocers' and druggists' sundries, brushes, and Yankee notions. I think they carried on their business until sometime in May, 1867, at least until closed by the sheriff.

Int. 3. Were you acquainted with the value of the stock of Hitchcock & Endicott at the time that firm were closed up by the sheriff? If yea, state the name and your means of knowledge.

Ans. I think I was, from the fact that I had been in the same business for some time previous, had sold them a portion of the stock, and understood pretty well the nature of the entire stock. I should consider the stock worth, at that time, eighty cents on the dollar of the original cost; the original invoice cost, which would amount to about
153 twenty-one or twenty-two thousand dollars. I get at these facts for the reason that I looked the matter over with the intention of buying the stock. I run over the stock and the invoices with the intention of purchasing, if possible, as I contemplated continuing the same business. The eighty per cent. on the original invoice cost, would amount to twenty-one or twenty-two thousand dollars.

Cross-examination:

Cross-int. 1. Do you or your firm hold a claim against the firm of Hitchcock & Endicott, which you hope to be satisfied in part out of the moneys realized from the Traders' Bank or the sheriff in case a final decree should be made in favor of the complainant in this suit?

Ans. No.

Cross-int. 2. Do you represent any such claim?

Ans. I do.

3. In whose behalf?

Ans. Woods & Co.

4. What is or has been your connection with the firm of Woods & Co.?

Ans. None whatever with the firm, except as agent for closing out a stock of goods purchased by them in this city, a portion of which was sold to Hitchcock & Endicott, and for which they are now indebted.

154 5. Do you not represent their claim, and what is its amount?

Ans. I do; the amount is between $2,600 and $2,800.

Re-dir.

1. Have you any knowledge how Hitchcock & Endicott's goods sold under the hammer? If so, state.

Ans. The first sale I was not in the city; at the adjourned sale I

bought some of the stock, and also, I have since bought from parties who bought at the first sale, a quantity of the goods, paying them in advance on the price paid by them, from which I have realized in selling at low prices, from five hundred to one thousand per cent. on the price paid; and I consider that it was the worst slaughtered stock of goods I ever heard of; I do not think they brought twenty-five per cent. of their value, from the fact that I have just closed up a similar stock at private sale, from which I realized from 10 to 15 per cent. above the invoice cost. I have understood that they realized from the stock about six thousand dollars at the sale on execution.

GEO. W. WOOD.

155 *Deposition of Gustavus Fisher.*

On the 29th day of July, Gustavus Fisher, a witness on the part of complainant, being first duly sworn, deposed and testified as follows:

Dep. Gustavus Fisher.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Gustavus Fisher; age, 29; residence, Chicago; and I am a deputy sheriff of Cook County, Illinois, and have been a deputy sheriff of Cook County since 1860.

Int. 2. Did an execution or executions come into your hands to execute in May, 1867, against Charles Hitchcock and Edward M. Endicott? If yea, state when, and what was done with or under the same?

Ans. One execution in favor of the Traders' National Bank against that firm came into my hands on the 29th of May, 1867, at 10.15 a. m. By virtue of said execution I went and levied on all the stock and fixtures in the store Nos. 27 & 29 Randolph street, up-stairs, belonging to that firm, Hitchcock & Endicott. The number of the execution is 20198. The number of the case is 27614. Another execution in favor of Hotchkiss Sons, No. 20202, number of case, 27622, was placed in my hands on the 30th of May, 1867, at 10.20 in the morning, and
156 was levied on the same stock immediately after it was placed in my hands. The amount of this execution was $1,385. The amount of the execution in favor of the Traders' National Bank, was $6,438 23.

Int. 3. Did any sale take place upon either of said executions, or both? If yea, when? and state all the circumstances relative thereto.

Ans. A sale was advertised to take place on the 26th of June, 1867. The day before the day of sale I was notified not to sell, on account of an application to the United States court; I opened the sale and adjourned it until the 27th of June. A certified copy of an order which I hereto annex, marked Exhibit A, was served. We afterwards readvertised the property on the 9th of August to be sold on the 20th of August. The sale commenced on the 20th of August, 1867, and continued from day to day until the property was all sold. The amount of the sale was $7,812 05; costs and expenditures were $1,679 00; net proceeds of sale, $6,133 05. I also have on hand $929 38 cash levied upon.

Int. 4. Did you obtain any money on the execution in favor of the Traders' National Bank; and if so, how?

Ans. I levied on moneys collected by the bank for the firm of Hitchcock & Endicott. I levied on $764 38 on the 12th day of June,
157 1867, and levied on $165, on the first day of July, 1867.

Int. 5. Where was the money in question when you made the levy last spoken of?

Ans. It was in the hands of the cashier of the Traders' National Bank.

Int. 6. Who informed you that the cashier had it, or asked you to make the levy, if any one?

Ans. Mr. Mattocks was the gentleman who informed me.

Int. 7. Had the order in the United States courts been dissolved at the time of the sale of the goods in question?

Ans. Not to my knowledge.

Int. 8. Did any one, and if so, who, direct you to go on and sell, notwithstanding that order?

Ans. During the time between the 27th of June and the day of sale, the 20th of August, Mr. Mattocks, and, I think, Mr. Rutter, had various conversations with the sheriff. About the 7th of August, 1867, the sheriff said to me that I had better go on and readvertise and sell the goods. I demanded of Mr. Mattocks and Mr. Rutter a bond, which was handed to me on the morning of the day of sale, by Mr. Mattocks.

158 Mr. Mattocks and Mr. Rutter both said to me that if I did not sell they would not be responsible for the costs and expenses of the delay, storage, rent, custodian's fees, &c.

Int. 9. Did Hotchkiss Sons, or their attorney, tender you a bond, or direct you to proceed and sell after the granting of the order?

Ans. I do not believe they did.

Int. 10. Where are the proceeds of the sale of the goods in question, and the money taken on the execution, as you have stated?

Ans. In the hands of the sheriff; that is, they are on deposit.

Int. 11. Where?

(Objected to as irrelevant & incompetent.)

Ans. Part of it is deposited as a special deposit in the Traders' National Bank; most of it, I think, six thousand five hundred dollars.

Int. 12. Have the executions, or either of them been returned?

Ans. They have not.

Cross-examination by John Mattocks, esq.:

Cross-int. 1. Were there any other executions or attachments in your hands against Hitchcock & Endicott previous to the day of sale, and after the execution of the Traders' National Bank was placed in your hands?

159 Ans. Yes. One execution in favor of Hotchkiss Sons, before mentioned; one in favor of Joseph C. Davis, for $147 54, dated June 19, 1867, and placed in my hands June 19, 1867.

Cr.-int. 2. Were there any other writs or warrants levied by you on said stock at that time?

Ans. There was a distress warrant placed in my hands in favor of James H. Bowen and Chauncey T. Bowen, for $333 33.

Cr.-int. 3. Were the said executions and distress warrant levied on said stock subsequent to the levy of the execution of the Traders' National Bank?

Ans. They are, with the exception of the Davis execution.

X-int. 4. Were you at any time previous to said sale, directed by Hotchkiss Sons, or their attorneys, or the said Bowens, or their attorneys, to release the levies made by you under the said execution and distress warrant?

Ans. No; I was not.

X-int. 8. Did you proceed to advertise and sell under the said Hotchkiss execution and the said distress warrant?

Ans. I advertised under the execution of Hotchkiss Sons, as well as under the first execution, but did not advertise under the distress warrant.

X-int. 6. Why did you not advertise under the distress warrant?

Ans. Because the execution under the distress warrant came
160 into my hands after I had advertised the property under the executions. I levied the distress warrant on only a portion of the stock.

X-int. 7. Was not the said Davis' execution a lien on said stock at the date of the sale before mentioned?

Ans. I suppose it was.

X-int. 8. Did you not sell under the execution of Hotchkiss Sons, as well as under the execution of the Traders' National Bank?

Ans. I did.

X-int. 9. When you so made the sales as aforesaid, were they not so made for the purpose of holding the moneys realized therefrom, subject to the decision of the United States district court?

(Objected to as incompetent.)

Ans. Yes; they were.

X-int. 10. Have you ever paid over the said moneys, or any portion of the same, to the Traders' National Bank?

Ans. I have not.

X-int. 11. Are not said moneys now subject to your order and control, as sheriff of Cook County?

Ans. Yes; they are.

X-int. 12. Will you state what, in your opinion, the charges for custodian's fees and sheriff's fees, and accrued rent amounted to at the time the said notice spoken of was served on the sheriff? (J. H. T.)

Ans. About seven hundred dollars.

161 X-int. 13. At the time the said notice was served upon you, did the sheriff not have a lien on said stock for fees and expenses for rent, custodian's and sheriff's fees in levying upon and advertising said stock of goods under the writs then in your hands, then levied on said stock?

(Objected to as incompetent and irrelevant and immaterial.)

Ans. Yes, I think he had; that is a legal question.

X-int. 14. Did you not consider at that time that he had a sheriff's lien?

(Objected to, for above reasons.)

Ans. Yes.

X-int. 15. Have you, from the moneys realized from said sale, paid and discharged the expenses, &c., above mentioned, or any portion of the same?

Ans. I have paid all the expenses with the exception of the sheriff's fees

X-int. 16. Have you applied any portion of said moneys realized from said sale, to the satisfaction of any part of the before-mentioned executions or writs?

Ans. I have not.

X-int. 17. Why have you not applied said moneys, or any part of the same, realized from sale on the execution, in favor of the Traders' National Bank?

Ans. To wait the decision of the United States court. This is what I meant when I spoke of the moneys being held subject to the
162 decision of the United States district court.

X-int. 18. Did you not, at the time of the service upon you of

said notice, consult with your own legal counsel as to your duty in proceeding to sell under said executions?

(Objected to.)

Ans. I did.

X-int. 19. After such consultation, did you not believe it to be your duty as sheriff, to proceed to sell under said executions?

(Objected to as improper and immaterial.)

Ans. I did.

X-int. 20. In making said sales as aforesaid, did you not act under the advice of your own counsel, independent of any suggestions made to you by said Rutter or said Mattocks?

(Objected to as incompetent and irrelevant.)

Ans. Partly so.

X-int. 21. In making said sales, was not the same conducted in a fair, open, and usual manner.

Ans. It was.

X-int. 22. Were the goods sold by you struck off at the highest price the same would bring?

(Objected to as leading.)

Ans. Yes, they were.

X-int. 23. Was the said sale well attended, and how many, in your opinion, were there in attendance?

163 Ans. There were from fifty to seventy-five, generally. The sale was held at the store, Nos. 27 & 29 Randolph street.

Re-direct examination by M. W. Fuller, esq.:

R'd int. 1. Was any levy made on the Davis execution; and what was the amount of it?

Ans. No levy was made on it. The amount was $147 50. Date, June 19, 1867.

R'd int. 2. What was the amount of the distress warrant?

Ans. $341 03.

R'd int. 3. The three executions and the distress warrant were all you held against Hitchcock & Endicott?

Ans. Yes.

R'd int. 4. Did Hotchkiss Sons or James H. Bowen, et al., give you any bond?

Ans. Bowen did not; Hotchkiss and Sons did not.

R'd int. 5. What was the date of the bond the bank gave you.

Ans. I don't remember.

R'd int. 6. I understand you to say that you levied *to* Hotchkiss Sons execution on this whole stock, but subject to the bank execution.

Ans. Yes.

R'd int. 7. Did not the United States marshal show to or serve upon you or the sheriff, an order for the sale of said property by him

164 as messenger? If yea, when?

Ans. I do recollect that he had an order to sell.

R'd int. 8. Examine the papers, marked Exhibit B & C, and state what they are.

Ans. They are copies of the original executions in my hands.

Re-cross examination by John Mattocks, esq.:

R'x-int. 1. You state that the Hotchkiss Sons execution was levied subject to the execution of the Traders' National Bank. Will you please state what you mean by that answer?

Ans. Because said execution came into my hands the day after the

bank execution was received, and would be a second lien on the property.

R'x-int. 2. Was not the levy under said execution and advertisement and sale, made independent of the Traders' Bank execution?

Ans. They were not.

R'x-int. 3. Do you mean that the Hotchkiss Sons execution was in any manner dependent on the Traders' Bank execution?

Ans. No, I do not.

R'x-int. 4. Was it?

A. It was not.

165 Re-redirect examination by M. W. Fuller, esq.:

R-r'd int. 1. If the bank or its attorneys had directed you not to proceed upon its execution, would you have proceeded to sell that stock of goods on Hotchkiss Sons' execution in the absence of any direction or suggestion from them or their attorneys, to that effect, and notwithstanding the order of the U. S. court alluded to? (J. H. T.)

(Objected to.)

Ans. I do not think that I should have sold under that execution.

Re-recross-examination by John Mattocks, esq.:

R-r'x-int. 1. Why would you not have proceeded to sell under the Hotchkiss Sons execution?

Ans. The Hotchkiss execution was the second one in my hands, and if I had been directed by the bank or its attorney not to sell under their execution, I think I should have postponed the sale under the other. It was a small execution.

R-r'x-int. 2. Is that the reason that you give for saying that you think you would not sell under the Hotchkiss execution?

Ans. Yes.

166 The further examination of this witness was adjourned to Friday, the 27th day of November, 1868, when examination was resumed.

R-r'x-int. 3. Had you, between the time the Traders' Bank execution was placed in your hands, and the service of the order of injunction on you, any attachments on your hands which were levied on the stock of goods in question; if so, please state the names of the parties in whose favor the attachment writs were issued, and the amount of the said attachments?

Ans. There was one in favor of H. S. Doane, and Hiram Averill, for $2,500, levied on the first day of June, 1867; another in favor of Charles H. De Forest and others for $221 19, levied the first day of June, 1867; one in favor of the Peoria Starch Manufacturing Company for $1,730 65, levied on the 30th day of May, 1867; another in favor of William W. Eastham & others for $4,000, which was levied on the 31st day of May, 1867.

4. By whose authority, or under whose instructions was the levy made in the Eastham case?

Ans. I could not answer.

5. Who were the attorneys?

(Objected to, on ground that the papers show for themselves.)

Ans. Fuller & Shepherd.

167 6. Were these attachments liens on the stock of goods of Hitchcock & Endicott at the time of the service of the said order upon you?

(Objected to, on the ground that the writs and record speak for themselves.)

Ans. They were subject to the executions.

7. Had you, at the time of the service of said order, been directed by any of the plaintiffs in said attachments, or their attorneys, to release the levies made by you under said attachments?

(Objected to as leading and incompetent.)

Ans. I had not.

8. Have you ever been, by them, or either of them, directed to release said levies?

(Objected to on same ground.)

Ans. I have not.

9. Had any liens for sheriff's & custodian's fees attached on said stock of goods by virtue of the attachments above mentioned?

(Obj. to as incompetent.)

Ans. I do not know that I can answer that question.

10. In case the Traders' Bank, or its attorneys had directed you to release their levy on said stock of goods, would you have released the other levies without positive instructions from the plaintiffs or their attorneys?

Ans. I should not.

GUSTAVUS FISHER.

168 EX. "A."

In the United States circuit court in & for the northern district of Illinois.

HEMAN S. DOANE & HIRAM AVERILL *vs.* CHARLES HITCHCOCK & EDWARD M. ENDICOTT. } Petition in bankruptcy.

To John L. Beveridge, sheriff of Cook County, & G. A. Fisher, his deputy, & the Traders' National Bank of Chicago, & Hotchkiss Sons, or their atty's:

Please take notice that we have this day, to wit, June 25th, 1867, filed a petition in the above court against the above-named Hitchcock & Endicott, as having committed the act of bankruptcy, to be adjudged bankrupts, and have also therewith petitioned said court to grant an injunction restraining you, and each of you, from proceeding to sell, or cause to be sold any goods, chattels, or property of said Hitchcock & Endicott, upon any execution or other process against them.

Application for which said injunction will be made to said court at 10 o'clock to-morrow morning; that is to say, at 10 o'clock a. m., of June 26th, 1867; and you are therefore hereby notified to suspend any
169 sale or disposition of the goods, chattels, or property of said Hitchcock & Endicott, until said application can be made, under the penalty of what the court may direct in the premises.

Yours, &c.,

FULLER & SHEPARD,
*Att'ys for Pet'r.*

CHICAGO, *June 25th*, 1867.

In district court United States, northern district of Illinois, Wednesday, June 26th, 1867.

IN THE MATTER OF CHARLES HITCHCOCK AND Edward M. Endicott, against whom a petition for adjudication of bankruptcy was filed on the 25th day of June, A. D. 1867. } In bankruptcy.

On the application of the petitioners, (creditors of said Charles Hitchcock and Edward M. Endicott,) to wit, Heman S. Doane and Hiram Averill, by Fuller & Shepard, their solicitors, on their
170 petition heretofore filed herein; and upon an examination of the same, it is ordered by the court that the sheriff of Cook County, Illinois, and his deputies, be enjoined and restrained from making sale, or from any further proceedings under and by virtue of executions in said sheriff's hands, or the hands of his deputies, against the goods, chattels, lands, and tenements of the said Charles Hitchcock and Edward M. Endicott, as prayed in said petition, until the further order of the court.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said district, hereby certify the above and foregoing to be a true, correct, and complete copy from the record of the proceedings of said court, in bankruptcy, of the order entered of record on the 26th day of June, A. D. 1867, in the matter of Charles Hitchcock and Edward M. Endicott, as the same appears of record remaining in my custody.
171 In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at my office, in Chicago, in said district, this twenty-sixth day of June, A. D. eighteen hundred and sixty-seven, and of our independence the ninety-first year.

[SEAL OF COURT.] W'M H. BRADLEY, *Clerk.*

[Exhibit A. Deposition of Gustavus Fisher. J. H. Thompson, N. P.]

172 EXHIBIT B.—*Deposition of Gustavus Fisher.*

STATE OF ILLINOIS,
*County of Cook, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the lands and tenements, goods and chattels of Charles Hitchcock and Edward M. Endicott, defendants, in your county, you cause to be made six thousand four hundred and thirty-two dollars and twenty-three cents, which Traders' National Bank, plaintiff, lately in the circuit court of Cook County, at a term thereof begun and held at Chicago, in said county, on the third Monday of May, instant, recovered against the said defendant, and which by the said court were adjudged to the said plaintiff for its damages, and also the further sum of four dollars and fifty cents, which were adjudged to the said plaintiff for its costs and charges in that behalf expended, whereof said defendants were convicted, as appears to us of record; and have you these moneys ready to render to the said plaintiff for its damages and costs aforesaid, and make return of this writ, with an en-

173 dorsement herein in what manner you shall have executed the same, in ninety days from the date hereof.

Witness William L. Church, clerk of our said court, and the seal thereof, at Chicago, in said county, this 29 day of May, A. D. 1867.

[SEAL.] (Signed) W'M L. CHURCH, *Clerk.*

Circuit court of Cook County. Fi. fa., No. 20198. Case No. 27614. Fee book 6, page 603, date May 29, 1867.

TRADERS' NAT. BANK, PL'FF,
*vs.*
CHARLES HITCHCOCK & EDW'D M. ENDICOTT, def't.

| | |
|---|---|
| Damages | $6,432 23 |
| Plaintiff's cost | 4 50 |
| Defendants' | 1 50 |
| | $6,438 23 |

The sheriff will collect interest from May 29, 1867.

(Signed) W'M L. CHURCH, *Clerk.*

MATTOCKS & MASON,
*Pl'ff's Att'ys.*

Sheriff will pay all costs (jury & witness fees excepted) to plaintiff's attorney.

(Signed) W'M L. CHURCH, *Clerk.*

174 EXHIBIT C.—*Deposition of Gustavus Fisher.*

STATE OF ILLINOIS,
*County of Cook, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the lands and tenements, goods and chattels of Charles Hitchcock & Edward M. Endicott, defendants, in your county, you cause to be made thirteen hundred and seventy-nine dollars and cents, which Hotchkiss Sons, plaintiffs, lately in the circuit court of Cook County, at a term thereof begun and held at Chicago, in said county, on the third Monday of May, instant, recovered against the said defendant, and which by the said court were adjudged to the said plaintiff for damages, and also the further sum of four dollars and fifty cents, which were adjudged to the said plaintiff for their costs and charges in that behalf expended, whereof said defendant convicted, as appears to us of record; and have you these moneys ready to render to said plaintiff for damages and costs aforesaid, and make return of this writ, with an endorsement hereon in what manner you shall have executed the same, in ninety days from the date hereof.

175 Witness William L. Church, clerk of our said court, and the seal thereof, at Chicago, in said county, this 30th day of May, A. D. 1867.

[SEAL.] (Signed) W'M L. CHURCH, *Clerk.*

Circuit court of Cook county. Fi. fa., No. 20202. Case No. 27622. Fee book 6, page 603, date May 30, 1867.

HOTCHKISS SONS, PL'FF,
*vs.*
CHARLES HITCHCOCK ET AL., DEF'T.

| | |
|---|---|
| Damage | $1,379 00 |
| Plaintiff's cost | 4 50 |
| Defendants' | 1 50 |
| | $1,385 00 |

The sheriff will collect interest from May 30, 1867.
(Signed) W'M L. CHURCH, *Clerk.*

E. G. ASAY,
*Pl'ff's Att'y.*

Sheriff will pay all costs (jury and witness fees excepted) to plaintiff's attorney.
(Signed) W'M L. CHURCH, *Clerk.*

176 *Dep. E. G. Asay.*

Edward G. Asay.

On the 30th day of July, 1868, EDWARD G. ASAY, a witness on behalf of the complainant, being first duly sworn, deposed and testified as follows:

Int. 1. What is your name, residence, and occupation?

Ans. Edward G. Asay; Chicago; lawyer.

Int. 2. Were you the attorney for Hotchkiss Sons in May, 1867, and did you obtain a judgment in their favor against Hitchcock & Endicott? If yea, what instructions, if any, did you give to the sheriff of Cook County in regard thereto?

(Objected to.)

Ans. The firm of Wilson & Asay, attorneys, of which I was a member, were the attorneys at that time of Hotchkiss Sons. A judgment was obtained in their favor against said firm by us, as their attorneys. We gave no instructions.

Int. 3. Were you aware of an order of the United States court enjoining the sale of the stocks of Hitchcock and Endicott on execution? Had you previously put an execution in the sheriff's hands on this judgment, and did you, after said order, direct the sheriff to go on and sell? When was your first knowledge that any sale was to take place?

Ans. I was aware of an order of the United States court enjoining sale on execution, having been present at the time it was made.
177 I had previously put an execution in the sheriff's hands on the judgment. I did not direct the sheriff, after said order, to go on and sell. I gave no special instructions with reference to the sale. My first knowledge that a sale was to take place was some days after it was advertised; but I cannot say how long.

(By agreement of parties, all the above questions stand objected to, as being irrelevant, immaterial, and improper.)

Cross-examination by John Mattocks, esq.:

X-int. 1. Was not Judge Wilson a member of your firm at the time referred to?

Ans. He was.

X-int. 2. Did you or Judge Wilson have particular charge of the proceedings in the Hotchkiss Sons matter?

Ans. As to the entering up of the judgment, Judge Wilson had charge more exclusively than I had. After the delivery of the execution to the sheriff, it became my duty to look after it, which I did.

X-int. 3. Did not Judge Wilson consult with the sheriff in regard to the Hotchkiss execution?

Ans. I do not know.

178 X-int. 4. Why do you then state that we—meaning Wilson & A say—gave no instructions to the sheriff?

Ans. Because in discussing the matter between ourselves, we concluded not to do so, and the matter was left in my charge with that understanding, and if any instructions had been given by any person connected with our firm, I should naturally have known it.

X-int. 5. Then you were not aware, of your own knowledge, whether or not Judge Wilson gave the sheriff any instructions, were you?

Ans. Only as I have just answered.

X-int. 6. Have you any positive knowledge about the matter?

Ans. My knowledge is simply that which I have stated.

X-int. 7. Did Judge Wilson give the sheriff any instructions?

Ans. My recollection is that the judge did say to the sheriff, at some time after, or about the time of the delivery of the execution, something to the effect that the money must be made out of the stock of goods belonging to the defendants, and that whatever was necessary to accomplish that end for the protection of the sheriff or otherwise, should be done. There was also some talk, whether with the sheriff or Mr. Mattocks I do not know, in reference to the propriety of having the goods sold by a regular auctioneer, in case they should be sold—

179 Gilbert & Sampson, or Butters & Co., to be selected as auctioneers. That course we both approved. There was also some talk about the propriety of allowing the goods to be sold in that way, that is, by regular auction sale, either under the direction of the sheriff or the parties in interest, and the money arising from the sale to be deposited in the clerk's office of the United States court, to wait the decision of that court as to its distribution; and I think an order was entered authorizing the United States marshal to take and dispose of the goods by auctioneer's sale, or at all events, that matter was talked over at the suggestion of Judge Drummond. So far as we were concerned, as the attorneys of Hotchkiss Sons, we expressed ourselves as satisfied that either of these operations should be carried out, as a means of avoiding collision, and securing the best price for the goods. I think these various measures were talked over with the sheriff or his deputy, Mr. Fisher, by both Judge Wilson and myself, but nothing was arrived at.

Did either you or Judge Wilson at any time have any conversation with M. W. Fuller, representing Doane & Co., or the complainant,

180 relative to the selling of this stock of goods, after the suggestions or order of Judge Drummond, above stated? If so, please state the purport of such conversation.

(Objected to.)

Ans. As for myself, I have no recollection of any conversation; I

think I suggested the matter once or oftener to Mr. Fuller; I do not know about Judge Wilson.

X-int. 9. What suggestions did you make to Mr. Fuller, and what reply did he make to the same?

(Objected to.)

Ans. My recollection now is that I suggested the propriety of having the goods sold at auction by Gilbert & Sampson, the net proceeds to be deposited in the United States court, to await the final result. I think he said he would consider the matter. I have no recollection of his making any definite reply, other than that. After the court had made the suggestion that the marshal should sell, and that the court should make distribution, I did have a conversation with Mr. Fuller in reference to the propriety of accepting that as a solution of the difficulty. He seemed anxious to act upon that suggestion and so expressed himself, and I being anxious that that course should be adopted,
181 I communicated with Judge Wilson, the suggestion of my views. One or both of us then had an interview or interviews with Mr. Mattocks, who expressed his fear that he might lose some rights that he had acquired by virtue of his execution and the jurisdiction of the State court over the whole matter, and in this condition I think the matter was left—no definite conclusion being arrived at.

X-int. 10. Did you not hold these different interviews with the different attorneys for the purpose of coming to some understanding with them about the sale, and at the suggestion, as you believe, of Judge Drummond?

Ans. The only conversations I remember to have held with attorneys were as I have stated, and I certainly supposed that I was carrying out the suggestion made by Judge Drummond, but of course my object was to get all the money I could out of the goods, and secure my clients against all chance of loss.

X-int. 11. Had you ever any positive knowledge of any peremptory order of injunction of Judge Drummond restraining said sale?

Ans. On the day the sale was first to have been made, I went into Judge Drummond's room, in company with Mr. Fuller, or some person in interest on his side, and the matter was then submitted to Judge Drummond, who said that he would make an order staying or
182 restraining the sale, and upon some one suggesting that the sheriff would require an authenticated copy of a regularly entered order, I replied that I had just come up from the deputy sheriff, Mr. Fisher, and that my note to him that the judge would make such an order, would stay the sale; I then noted something to that effect to the deputy sheriff, and the rule was thereupon postponed. As to the actual entering the order or the injunction, or the service of it, I have no knowledge. The interview with Judge Drummond was some little time before the time for the opening of the court; neither Mattocks & Mason, nor Blodget & Winston, nor any representative of the Traders' Bank, to my knowledge, were present at that interview. I had agreed to send word down to Mr. Fisher.

X-int. 12. Did you at any time furnish the sheriff with an indemnifying bond for Hotchkiss Sons?

Ans. No; but we did say to the sheriff, that if he required it at any time in the execution of our writ, we would furnish him a bond. This was at some time, but just when I cannot say, after the delivery of the execution.

X-int. 13. After or before said sale, did you or Wilson suggest to the sheriff that the moneys realized from said sale should remain in his

183 hands, instead of applying them on the Traders' Bank execution?

Ans. After the sale, Mr. Rutter, president of the Traders' Bank came to me and said that he wanted to get at the proceeds of the sale, so far as they were entitled to them; and that he thought there would be enough to pay both executions, arising out of the sale, and that he wished me to do all I could to enable them to get their money. The proceeds of the sale were said to be insufficient to pay both executions, by Mr. Fisher. I then insisted that Rutter must in some way have my execution satisfied in full. This he declined to do, and then informed me that the sheriff would not pay either execution, except upon the order of the State court, and that order he did not wish to seek. I then suggested of my own accord, that I would see the sheriff, and I thought he would deposit the money in his bank as a special deposit, thus giving the bank the use of the money without involving the sheriff in the legal questions that might arise as to the distribution of the fund. I saw the sheriff, who stated to me the facts as he understood them, and asked me whether I thought it would be right to ask him to apply the
184 fund in hand even if a bond of indemnity should be given, which had been suggested. I said "No; but perhaps, sheriff, this being an undoubtedly solvent bank, you could safely deposit the funds as a special deposit with them." This the sheriff said he would consider. I told the sheriff at that time that I had no objection to the entire fund being deposited in the bank to await the issue.

Did you ever instruct the sheriff not to sell under the Hotchkiss execution?

Ans. No.

E. G. ASAY.

*Dep. J. L. Beveridge.*

John L. Beveridge.

On the 30th day of July, 1868, John L. Beveridge, a witness on behalf of the complainant, being first duly sworn, deposed and testified as follows:

Int. 1. What is your name, age, residence, and occupation; and what was your occupation in May, 1867?

Ans. John L. Beveridge; of lawful age; residence, Cook County; and I am, and was in May, 1867, sheriff of Cook County, Illinois.

Int. 2. Were two executions put in the sheriff's hands to execute—one in favor of the Traders' National Bank, and the other in favor
185 of Hotchkiss Sons, both against Hitchcock & Endicott, in May, 1867; if yea, what was done thereunder? If you state that said executions were levied on Hitchcock & Endicott's stock, were you aware (J. H. T.) of an order of the United States court restraining sale thereon; if yea, what directions, if any, were given by the Traders' National Bank, or Hotchkiss Sons, or either of them, or the attorneys of either of them, in relation to proceedings to sell?

Ans. Two such executions were placed in my hands in the latter part of May, 1867, which were levied upon the stock and goods of Hitchcock & Endicott, and they were advertised for sale. I was aware of such an order issued, or about to be issued, on the morning of the day of sale, as originally advertised. Such an order was then, or afterwards, served on me. I consulted Mr. Blodget for the bank, and he said we had better not sell. I saw Mr. Fisher, and he said he had seen Mr. Asay, and Mr. Asay gave him the same instructions. The sale thereupon was either

adjourned or postponed. Mr. Blodgett said he would see Judge Drummond. Afterwards he said to me that he thought I had better proceed to sell the goods, and that he did not think Judge Drummond
186 would consider it a contempt of him, or his court, but what Judge Drummond would do if the matter was brought before him officially, he could not say. I told Blodgett before this that I would not sell any way if it was going to put me in contempt, or in open collision with the jurisdiction of the U. S. court. I had some conversation and some little difficulty in arranging the matter of the bond with the bank. Mr. Asay said he would give us a bond any time on the Hotchkiss execution. I directed Mr. Fisher several times to get a bond from Mr. Asay. Whether or not a bond was given I am not positive. I think not. The bank gave me a bond. This was the second bond. The property levied on was advertised and sold under the instructions of the Traders' Bank or its officers or attorneys, and with the knowledge and consent of the attorneys of Hotchkiss Sons, and, I think, with their positive advice. The U. S. marshal, as messenger, had demanded of me the property, which I told him I should have to refuse to deliver without the consent of the parties interested. The attorney, I think Mr. Mattocks, of the Traders' Bank, told me if I released the execution, and turned the property over, they would hold me personally respon-
187 sible; and on ascertaining that Judge Drummond would not deal with me for contempt, and not being able to get from him a decision as to the rights of the parties, I deemed it best to comply with the instructions of the attorneys representing the executions, and had the property sold, as the best thing I could do. Out of the proceeds of sales, after the payment of expenses, I deposited with the Traders' National Bank, on special deposit, the amount of their claim due on execution. The balance is in my hands, except the sum of two hundred dollars paid to Mr. Asay, attorney of Hotchkiss Sons, or advanced to him as a special (J. H. T.) favor, to be accounted for on settlement with them on the execution.

Cross-examination by John Mattocks, esq.:

Cross-int. 1. What do you mean by stating that the property was sold under the instructions of the Traders' Bank, or its attorneys, as well as under the knowledge and consent, &c.

Ans. I had considerable conversation with Mr. Blodgett, Mr. Mattocks, Mr. Rutter, and the conclusion come to among them was that it was best to sell. I do not understand that any one of them said to me
188 "You must sell;" but it was agreed among them that it was best to sell, and so advised me. I considered myself as acting under their instructions.

X-int. 2. Was there not a difficulty in adjourning the sale from time to time on account of the large expenses growing out of rent, storage, and expenses, and a probable depreciation of the property in your hands, until a decision could be had in the U. S. court as to the powers and duty of the sheriff in the premises; and if so, was not this fact taken into consideration by you in making such sale, and discussed between the various parties in interest?

(Objected to as incompetent.)

Ans. To adjourn the sale from time to time, until the whole matter would probably be decided in the U. S. court, would have caused a very great expense, as well as a depreciation in the value of the property, which expense, together with the depreciation, I concluded would nearly use up the stock. This whole matter was discussed freely by myself

with the parties in interest, and to avoid such a contingency it was deemed best to sell.

X-int. 3. In case you had released the Traders' Bank execution levy, and been sued by them for damages, or held personally responsi-
189 ble, as threatened, did you have any bond of indemnity furnished by the firm of Doane & Co., the original petitioners, or the complainant in this case, to which you could look for reimbursement, or was such bond ever offered you?

Ans. I had no such bond, and no such bond was ever offered me.

JOHN L. BEVERIDGE.

*Dep. C. Hitchcock.*

On the 17th day of November, Charles Hitchcock, a witness on the part of the complainant, being first duly sworn, deposes and testifies as follows:

Examined by M. W. Fuller, esq.

Charles Hitchcock.

My name is Charles Hitchcock, & I have already been examined in this case.

1 q. How much money did Mr. Endicott put into that concern?

A. Nine thousand five hundred dollars.

2. Did you make any representation to the Traders' Nat. Bank at the time Hitchcock & Endicott commenced business, or to Edward M. Endicott, when he went into partnership with you, which were untrue?

A. I did not.

3. When the note was given to Hotchkiss Sons, were Hitchcock
190 & Endicott able to meet their payments in the usual course of business?

A. They were not.

4. What did you find, upon examination, as to the condition of your concern after the book-keeper absconded?

A. Made no examination.

5. Did you institute no examination after Endicott arrived from the East?

A. He was only in here part of a day before the execution of the judgement note; there was no opportunity.

6. Were your assets equal to your liabilities on the 29th day of May?

A. No, sir.

7. What was the cause, if you know, of your failure?

A. On the first of Jan'y, after acc't of stock was taken, the books were not balanced. It doesn't appear that they were balanced any more than on a balance-sheet, which we supposed was correct until we found at the time the book-keeper made the statement.

8. What had absorbed your capital?

A. Our sales, if I remember, had been, according to our returns, about $80,000 per year, which was but little more than half the sales of the previous year. Our expenses were about $3,000 a month, as near as I can remember now. That is the only way I can acc't for any
191 difference. I cannot state what am't of profit there would be. We had a pretty heavy stock of goods, from which we sold without expecting to get a heavy profit on it. I should think the profits might perhaps have been 20 %.

9. From Jan'y to the last of May, 1867, were you purchasing many new goods?

A. We did not purchase a great many, desiring to keep our stock down.

10. What was the extent of your sales during that period? State as nearly as you can.

A. They might have been from $35,000 to $40,000, perhaps.

11. When the note to Hotchkiss Sons was given, were any account or commercial paper overdue & unpaid?

A. There were.

12. Were your assets at that time equal to your liabilities? Give your judgment upon your present knowledge.

A. I should think it was about an even thing.

CHARLES HITCHCOCK.

STATE OF ILLINOIS,
*Cook County, City of Chicago, ss:*

I, J. Howland Thompson, a notary public in and for the city of
192 Chicago, in said county and State, do hereby certify that the foregoing deposition of Charles Hitchcock, George W. Wood, Gustavus Fisher, Edward G. Asay, John L. Beveridge, and Charles Hitchcock were taken before me from time to time, as noted in said depositions, commencing with the 25th day of July, 1868, and concluding on the 27th day of November, A. D. 1868, to be used and read in evidence on the hearing of a cause now pending and undetermined in the United States district court for the northern district of Illinois, wherein George W. Campbell, assignee, is complainant, and the Traders' National Bank of Chicago and others are defendants, under the stipulations hereto annexed.

And I further certify that the said witnesses were severally duly sworn; that the interrogatories to, and the answers of, said witnesses were reduced to writing by me, or under my direction, and that said depositions were severally read over to, and subscribed by, the said witnesses in my presence, and that the exhibits attached to said depositions are the exhibits produced and referred to by said witnesses.

And I further certify that the said depositions were taken on the part of the complainant, and that the respective parties were present
193 at the taking of said depositions, the complainant by Melville W. Fuller, esq., and the defendants by John Mattocks, esq.

In witness whereof I have hereunto set my hand and notarial seal this 3d day of December, 1868.

[SEAL.] J. HOWLAND THOMPSON,
*Notary Public.*

[Int. rev. stamp, cancelled, 5 cents.]

Com'r fees, $41 00; paid by M. W. Fuller, esq., sol'c'r for complainant.

194 *Depositions for defendant.*

Depositions of Joseph O. Rutter, Asa Williams, and Edward M. Endicott, taken on the part of the defendants, to be used and read in evidence on the hearing of a cause now pending in the United States district court for the northern district of Illinois, wherein George W. Campbell, assignee, is complainant, and the Traders' National Bank of Chicago and others are defendants, on the 7th day of August, 1868.

*Dep. of Jos. O. Rutter.*

JOSEPH O. RUTTER, a witness on the part of the defendants, being first duly sworn, deposed and testified as follows:

Int. 1. What is your name, residence, and occupation?

Ans. My name is Joseph O. Rutter; I reside in Chicago, and I am president of the Traders' National Bank of Chicago.

Int. 2. What was your occupation in May, 1867?

Ans. President of the Traders' National Bank.

Int. 3. Were you at that time acquainted with the firm of Hitchcock & Endicott; and if so, how long had you known them?

Ans. I was, and had known them since their organization as a
195 firm, some time in 1866, I think.

Int. 4. Had you, in the month of May, 1867, and previous to that time, any business transactions with said firm? If so, state when said business commenced & its character.

Ans. The Traders' National Bank had transactions with them, commencing in November, 1866, I think. The character of the business was such as is usual between a bank and its customers. They kept a bank account at the bank, borrowed money, made deposits, drew checks, and did such other things as naturally went through a bank in their business.

Int. 5. Who had the general charge and management of the affairs of said bank during the month of May, 1867, and previous to that time?

Ans. I was the chief officer of the bank, and had chief charge of it in all respects.

Int. 6. Were the said firm of Hitchcock and Endicott, on the 28th day of May, 1867, indebted to said bank; and if so, on what account and in what amount? State the same fully.

Ans. They were indebted to said bank in the amount of about six thousand seven hundred dollars on that day, to the best of my recollection, for loan made and drafts purchased.

Int. 7. Will you please furnish a statement of said indebtedness, and annex it as a part of your answer to the last interrogatory?

196 Ans. I will.

(The paper produced by the witness is hereto annexed, marked Exhibit A.)—J. H. T.

Int. 8. Will you state, from your recollection, the nature of said indebtedness?

Ans. I think $4,500 was for money loaned to them, and $2,200 was for drafts purchased of them—two fifteen hundred dollar notes, one $1,000 note, and one $500 note, the balance being drafts before spoken of.

Int. 9. What do you mean by drafts?

Ans. Their drafts on other people, which I bought of them, placing the proceeds of said drafts to their credit, which they used, they being liable to me as principals for said indebtedness, until the drafts were paid.

Int. 10. Did you, on or about the 10th day of May, 1867, sue out a capias against Charles Hitchcock, and a summons against Edward M. Endicott for said indebtedness; and if so, what induced you to take such proceedings?

Ans. I sued out a capias against Hitchcock, and a summons against Endicott, from the circuit court of Cook County, Illinois; a disposition to collect my money induced me to take such proceedings, they having

made a written statement of their affairs to me which I had good reason to believe fraudulent

197 Int. 11. Had your bank, on the strength of said statement, advanced any money, or given any credit to said firm; if so, to whom was said money advanced or credit given?

Ans. I regarded and believed said statement, when I received it, to be true. I continued to do business with Hitchcock and Endicott in that belief. I gave them credit and loaned them money in that belief.

Int. 12. By which member of said firm was said statement furnished, and to whom was it furnished; state, also, the purport of that statement, the object for which it was made, the time, and also whether said statement was true? If said statement was not true, state wherein it was untrue.

Ans. The statement was furnished in consequence of the demand made by myself upon Mr. Hitchcock, the senior member of the firm. It was handed to me by the book-keeper of the firm. The purport of that paper was to show the firm of Hitchcock & Endicott had a clear and unimpaired capital of about twelve thousand dollars, more or less, over and above all their liabilities. The object for which it was given, was to furnish me with the information which it contained. It was given during the early part of May; I think about the 10th; perhaps it may have been earlier, perhaps a little later. I have reason to believe that

198 the statement was not true, said reason being based on statements given to me, purporting to come from Mr. Hitchcock, which were that his book-keeper had run away, and that the statement made to me was not true; said information coming to me before the capias against Hitchcock was issued. I have not examined the books of Hitchcock & Endicott, and cannot state, of my own knowledge, in what respect the statement is untrue.

Int. 13. State whether your bank was deceived by said statement, and if so, at what time you first discovered said statement to be untrue?

(First part of question objected to.)

Ans. I was deceived by said statement as president of the bank; I think it was the day after the book-keeper of Hitchcock and Endicott ran away that I learned that which led me to believe, as I do now, and have ever since, that that statement was untrue; I think that was about the 22nd day of May,

Int. 14. What effect did such discovery have upon you or your bank?

Ans. The effect of inducing me to discontinue business transactions with the firm of Hitchcock & Endicott, and to induce me to use every effort and exertion that I could to regain the money they had obtained from the bank.

Int. 15. What proceedings did you take to accomplish that object?

199 Ans. I informed them of the discovery of the fraud in the statement; I made a demand upon them to return the money which they owed the bank. Failing in that, my intention was to hold Mr. Hitchcock liable in every way that I could, and I commenced a suit in the circuit court, and had a capias issued, with a view of collecting, if possible, the money in that way.

Int. 16. What do you mean by your statement "holding Mr. Hitchcock liable?"

Ans. I mean that the statement furnished me of the condition of the affairs of the firm was done, as I believe, by the direction of Mr. Hitchcock, and I meant to hold him to whatever liability might accrue in

consequence of damage to me from the presentation of a fraudulent statement of the affairs of the firm.

Int. 17. Where were Mr. Hitchcock and Mr. Endicott at the time of the discovery of the alleged fraud?

Ans. Mr. Hitchcock was in Chicago; Mr. Endicott, I was informed, was out of the city.

Int. 18. Were said summons and capias issued by your direction in good faith, for the purpose of collecting the money due your bank from Hitchcock & Endicott?

(Objected to as not competent.)

Ans. They were.

Int. 19th. Why did you not issue a capias instead of a summons for said Endicott?

200 Ans. Because I had no reason to believe him a party to the fraud.

Int. 20. Was it your intention to have a capias issued for said Endicott in case that you learned that he was in any way connected with the fraud, or, rather, was it your intention to arrest said Endicott, and hold him, if possible, in case you could make out a case of fraud against him?

(Objected to as improper.)

Ans. I had no intention about in one way or the other. Had I supposed him a party to the fraud, I have no reason to think now, from my recollection of the circumstances, that I would have made any distinction between parties to what I believed to be a fraud.

The further examination of this witness was adjourned to Saturday, the 8th day of August, 1868, at which time the examination was resumed, and—

Witness desires to correct his answer to the 13th interrogatory, as follows:

I find, on reference to a memorandum, that it was on the 24th day of May, 1867, that I learned the information which led me to believe that the statement furnished by the book-keeper was untrue.

201 Will you produce the original statement furnished you by Charles Hitchcock, above referred to, and make it a part of your answer?

Ans. I furnish it herewith.

(The paper produced by the witness is hereto annexed, marked "Exhibit B.")

Int. 22. State whether the judgment not taken by your bank exceeded in amount the indebtedness of Hitchcock and Endicott at the time said note was so taken.

Ans. No.

Int. 23. Did you know, or had you any reasonable cause to believe, at the time said note was so taken, that said Hitchcock and Endicott were insolvent?

Ans. I did not know that they were, and had no reason to believe that they were.

Int. 24. State in narrative form, as near as you can, the reasons which induced your bank to take the judgment note above referred to, and the proceedings had thereunder.

Ans. I had reason to suppose, from my observation of the business of Hitchcock & Endicott, that there was gross incompetency or negligence in the management. I sent for Mr. Hitchcock, and had a conversation with him, relative to the affairs of the firm. His igno-

202 rance, or apparent ignorance was so great, that I then and there

demanded a written statement of the affairs of the firm, taken from the books of the firm, which statement he promised to furnish me, and which is the one now furnished as part of my deposition. The fact of the untruthfulness of that statement led me to close my business relations with him; and the proceedings which were had in the circuit court, as before stated, were with the view of collecting my money as speedily as possible. Finding that I could not get them to pay me the money back, I demanded the warrant of attorney from them to confess judgment, which confession was duly entered, execution issued upon the judgment, and placed in the hands of the sheriff. I do not know that Mr. Hitchcock was ever arrested by the sheriff upon the capias; I was informed that he was not, but that he refused to sign the judgment note when the demand was made upon him by my clerk, Mr. Smith, and asked the sheriff the privilege of going to the water-closet; that he went to the water closet, and from there disappeared, not returning to his office or store during that day, under fear of the consequences of his acts. He did subsequently reluctantly sign the warrant of attorney. I was further informed that Mr. Endicott also refused to pay the money, sign the note or warrant of attorney when the
203 demand was made upon him by Mr. Smith. He subsequently did sign it, for reasons of which I have no knowledge, except on information.

(All the foregoing answer stated to be upon information, objected to as incompetent.)

Int. 25. Did you believe that said Hitchcock had, in behalf of his firm, intentionally misrepresented the condition of the affairs of said firm for the purpose of obtaining money and credits from your bank?

Ans. I did.

Int. 26. Did you, previous to the commencement of the suit against Hitchcock and Endicott, demand of them payment of their indebtedness on the ground that a fraud had been committed by them?

(Objected to as leading.)

Ans. I did.

Int. 27. What induced you, previous to the commencement of said suit. to demand of said firm payment of their indebtedness?

Ans. The belief that I had been the victim of a fraud.

Int. 28. When such demand was made, what answer was made by said firm thereto?

Ans. They refused to do it.

Int. 29. What steps did you then take to collect their indebtedness?

Ans. I commenced suit in the circuit court, had a capias
204 issued against Mr. Hitchcock, and a summons against Endicott. I made an affidavit, and I had the capias and summons placed in the sheriff's hands, with directions to arrest Hitchcock if the money or satisfactory security was not given, or the judgment note given.

Int. 30. Had you any conversation or agreement with said Hitchcock and Endicott, or with the agents or attorneys of them, or either of them, or any one representing them, or either of them, by which they agreed to give your bank a preference or to assist you in the collection of your debt or to prefer you in its collection in any manner; or had you any friendly intercourse with them or either of them, or their agents, attorneys, or representatives about the matter?

(Last branch of interrogatory objected to as leading.)

Ans. I had no agreement or understanding of any kind or nature whatever with Hitchcock and Endicott, or either of them, or with any of their agents or attorneys, or either of them, to receive any preference or aid

in the collection or payment of their indebtedness to our bank; I had no friendly intercourse with them, or either of them, or with their agents, attorneys, or representatives, or either of them about the matter.

Int. 31. Did you believe, or had you reasonable cause to believe that said Hitchcock & Endicott intended to commit, or did commit
205 any fraud on the bankrupt law, so called, in the giving of said note or said warrant of attorney, or in fraud of any of the provisions of said bankrupt law, or in contemplation of bankruptcy, or that they fraudulently contrived to procure the said seizure of their said stock of goods, or to evade the provisions of said bankrupt law.

(Objected to as leading and incompetent.)

Ans. I do not believe, and did not believe, I had no reason to believe, and have not since believed that Hitchcock and Endicott, or either of them, intended to commit, or did commit any violation, or any fraud, or any preference on the bankrupt law in the giving of said note and warrant of attorney, or in fraud of any of the provisions of said law, or in contemplation of bankruptcy, or that they fraudulently contrived to procure the said seizure of their said stock of goods, or to evade the provisions of said bankrupt law.

(The foregoing answer objected to on the ground that the witness is not an expert, and if he were, he could not swear to legal conclusions. The witness must be confined to testifying to the facts out of which the transaction grew, and of which it formed a part.)

Int. 32. Were said Traders' National Bank or yourself possessed of knowledge of the intent of said Hitchcock & Endicott to execute
206 said judgment note or warrant of attorney, in contemplation of bankruptcy, with intent to give a *preverence* to said bank, and in fraud of the bankrupt law?

(Objected to as leading and incompetent.)

Ans. No. I am the president of the bank; I had no such knowledge.

Int. 33. Would you, as such president, have been possessed of such knowledge, had the bank obtained it, and do you believe that said bank had, at the time, any such knowledge or information?

Ans. As the chief executive and responsible officers of the bank I had no knowledge of any information held by any of the subordinate officers or employees of the bank, going or tending to show any such knowledge upon the part of any of them. It would be the duty of each and all of them to put me in possession of any information they might possess. I believe had any such information been possessed by any officer or employé of the bank I should have known it.

Int. 34. State whether the proceedings culminating in said judgment and execution were collusively conducted by, or in conjunction with, said Edward M. Endicott, in particular, or at all, and by agreement with one Endicott, his brother, a director of said bank.

207 Ans. There was no collusion between myself, Edward M. Endicott, and William F. Endicott, his brother, who was a director in the bank.

Int. 25. After said execution was placed in the hands of the sheriff what steps were taken by you or your bank, if any, or were any steps taken by you, either by instructions to the sheriff or by any directions from you, toward the collection of the moneys under said execution?

Ans. I told the sheriff to collect the money on the execution if he could find any property; that I should hold him responsible as an officer of the law for the proper execution of his duties. He asked me for instructions, which I declined to give. I told him he was an officer of

the law, and the law prescribed his duties; that I did not propose to do anything except in strict conformity to the law.

Int. 36. Was any copy of an order of injunction restraining you or the sheriff from making sale under said execution ever served upon you or your bank or your agents or attorneys, to your knowledge?

Ans. I do not know of any.

Int. 37. Had you any knowledge before the day of sale that any such order had been issued against the sheriff?

Ans. I never saw any such order, and do not, of my own knowledge, know anything about it. I was not in the city at the time of the sale, and had not been here for some time previous.

208 Int. 38. Were any letters written by you during your absence, or instructions given of any kind, to the sheriff or to any other person, as to what course he should take under said execution in the matter of making sales thereunder, or was the matter left in the hands of any other officer of your bank?

Ans. I wrote no letters to the sheriff, or any one else. I left the matter in the hands of my attorneys, with instructions to the cashier of the bank to be directed and governed by them in anything he did in the matter during my absence.

Int. 39. Were any measures taken by your attorneys, to your knowledge, or by your cashier, to compel or direct the sheriff to sell under said execution?

Ans. I do not know what passed between my attorneys, the cashier, and sheriff during my absence, except that the cashier told me on my return that he had executed a bond to the sheriff.

Int. 40. Was said bond executed in pursuance of an agreement made with the sheriff at the time the execution was first placed in his hand?

Ans. It was.

209 Int. 41. State whether any representations as to the solvency of the firm were made to you by either member of the firm of Hitchcock & Endicott for the purpose of inducing you to lend or advance moneys to said firm previous to the said written statement furnished by "T. H., book-keeper." If so, state what statements were made, and by whom, and the dates when they were so made.

(Obj. to as leading and incompetent.)

Ans. When Mr. Endicott proposed opening an account at the bank he represented to me that the firm was in a solvent condition, and had in addition to the capital which he put into the firm, which was about $9,500, capital belonging to Mr. Hitchcock amounting to about $5,000. I took occasion several times afterwards to inquire of Mr. Endicott in regard to the responsibility and solvency of the firm, and was assured that the firm was solvent and responsible, and was making money. The first conversation was in November, 1866. I am under the impression now that most of the subsequent conversations occurred after January, 1867.

Int. 42. Were you induced by the said representations made by Hitchcock or Endicott to advance moneys on the credit of the responsibility of said firm?

Ans. I was. My whole business transactions with them were based upon the representations of their solvency and my belief in them.

210 Int. 43. When you loaned or advanced moneys to said firm was it customary for you to require them to furnish you judgment notes for the advances so made from time to time?

Ans. It was.

Int. 44. What kind of notes were held by your bank against said firm already referred to by you?

Ans. I think they were all judgment notes.

Int. 45. Why had you previously required them to furnish you judgment notes?

Ans. To enable me to enter up judgment in case I wanted to, or in case I should consider it necessary. I very commonly take judgment notes when I make loans.

Int. 46. When did you first commence taking or requiring judgment notes of said firm?

Ans. When I first commenced lending them money.

Int. 47. Why did you not institute summary proceedings against Endicott as well as against Hitchcock, on account of the representations made you by him of the solvency of said firm?

Ans. Because I believed him to be as much imposed on as I was.

Int. 48. How came the sum $325 30 to be endorsed on such judgment note by your bank on May 29, 1867.

Ans. It was money standing to the credit of the firm on the books of the bank.

211 Int. 49. Was that amount standing on your books to the credit of the firm of Hitchcock & Endicott at the time said judgment note was given by them?

Ans. I think it was.

Int. 50. Why was not said amount deducted from said judgment note at the time it was so given?

Ans. I do not recollect. I presume it was because there were little transactions going on in their open account.

Int. 51. Could there have been such a credit and your bank have failed to include the amount in ascertaining their indebtedness on the 28th day of May, 1867?

Ans. In ascertaining the amount due by them to me for loans made and drafts bought, I do not recollect that I took into consideration any amounts that might appear on the books in their deposit account as due from the bank to them. The amount standing at their credit on the 29th of May was endorsed on the note because I supposed the bank had a right to hold on to and apply in judgment of the note any funds which the firm might have on deposit with it. I do not recollect whether or not any check was given for it.

212 Int. 52. Will you explain how the sum of $900, or thereabouts, of moneys belonging to Hitchcock & Endicott in the hands of your bank came to be endorsed by the sheriff on your execution?

Ans. All moneys which came into the hands of the bank after the execution was placed in the hands of the sheriff belonging to Hitchcock & Endicott were placed in an envelope by themselves and marked Hitchcock & Endicott. The sheriff levied upon such moneys as part of the property of said firm.

Int. 53. State what disposition was made of drafts unpaid belonging to the firm of Hitchcock & Endicott.

Ans. They represented nothing in the way of value, and were returned to Hitchcock & Endicott.

Int. 54. Have the moneys realized by the sheriff from your execution been applied on the same or paid over to your bank?

Ans. They have not, to my knowledge.

Int. 55. Were you ever made a party to any proceedings in bankruptcy commenced against said firm of Hitchcock & Endicott, or did you ever appear, or authorize any appearance in said proceedings, or

have you ever been represented in said proceedings, or in any applications for orders or injunctions growing out of the same?

Ans. No.

Cross-examination by Hon. M. W. Fuller:

Cross-int. 1. Were you not present in court when an application
213 was made on proceedings pending against Hitchcock and Endicott in bankruptcy for an order that the marshal sell Hitchcock & Endicott's stock, or take possession of the same, or some other order in such proceedings in relation thereto?

(Obj. to.)

Ans. I was in court when some proceedings were had relative to the bankruptcy of Hitchcock & Endicott. I was there as a spectator, not as a party participating in such proceedings.

X-int. 2. Were you ever aware, by information or otherwise, of any order granted by the U. S. district court restraining the sheriff of Cook County from selling the stock of Hitchcock and Endicott upon execution; if so, when?

(Obj. to.)

Ans. I had no personal knowledge of any such order. I do not now recollect that I had any information that any such order was absolutely issued. I heard that there was a probability that such order would be applied for and probably issued. It was some time after the sheriff had taken possession of the goods, and before I went East.

X-int. 3. When was the statement signed "T. H., book-keeper," and annexed to your deposition, marked Exhibit B, furnished, as you have testified?

Ans. I think about the 10th or 12th of May, 1867.

X-int. 4. Did you, in asking for it, express a wish to have it for any other's use than your own?

214 Ans. I did not.

X-int. 5. Please restate the amounts and character of the indebtedness included in the judgment note, on which judgment was confessed, in favor of the bank against Hitchcock & Endicott?

Ans. There were $4,500 in notes which were given for loans made, about $2,207 liabilities of the firm, of the bank as principals, being their drafts upon other parties upon which the bank had paid money.

X-int. 6. What were the amounts, date, and time of maturity of the notes?

Ans. One note, dated March 20, 1867, for $1,000, due June 19, 1867; one dated April 8, 1867, 60 days for $1,500, due June 10, 1867; one dated May 8, on 15 days, due May 26, 1867, for $500; one dated May 20, 1867, at 60 days for $1,500, due July 22, 1867.

X-int. 7. At what time were the drafts taken principally?

Ans. I find, on reference to the books of the bank, that there were about $1,700 of drafts taken between the 13th of May, and the 29th of May, the balance I did not look to see, but presume were taken previous to the 13th of May.

X-int. 8. What proportion of the $1,700 was subsequently paid, and about when?

Ans. $943 23, I find, was money levied upon by the sheriff. This
215 money was in payment of Hitchcock & Endicott's drafts; $1,264 20 of drafts were returned unpaid. The payments were made, or rather received after the 29th of May at irregular dates. I presume that most, if not all the $943 23, was received in payment of part of the $2,200 in drafts. A precise answer involves an extended examination of the

books of the bank, which I have directed to have made. I cannot tell from recollection what proportion was out of the $1,700.

X-int. 9. When were the drafts, amounting to $1,264 20, returned to Hitchcock & Endicott?

Ans. I do not recollect the date.

X-int. 10. Was it after proceedings in bankruptcy had been commenced against Hitchcock & Endicott?

Ans. I think it was.

X-int. 11. You did not tender them any of the drafts to Hitchcock and Endicott before taking the judgment note on which judgment was confessed?

Ans. I did not that I recollect of.

X-int. 12. Was any such tender made before a demand on Hitchcock & Endicott for the judgment note?

Ans. There was not.

X-int. 13. Was a demand made on Hitchcock & Endicott for the judgment note in question before the affidavit was made and the capias issued, of which you have testified?

Ans. I made a demand for the money due or security. I can-
216 not now state whether I specially demanded a judgment note or not.

X-int. 14. Was either of the notes, included in that judgment note, a judgment note; if so, which?

Ans. The whole of the $4,500 were judgment notes, I think.

X-int. 15. Were those notes, or either of them, tendered to Hitchcock & Endicott upon taking the judgment note on which judgment was taken? Where are those notes now?

Ans. They are all delivered to Hitchcock & Endicott. I cannot say where they are now.

X-int. 16. What was the character of the powers of attorney attached to those notes; when did they authorize the entry of judgment?

Ans. When the notes became due.

X-int. 17. Who gave you information that the book-keeper had run away, and when?

Ans. Mr. William F. Endicott, I think, about the 22nd of May. I think it was the day after he ran away.

X-int. 18. Who was W. F. Endicott—what relation did he sustain to the bank, if any, and to the Endicott of Hitchcock & Endicott?

(Obj. to.)

Ans. He was a director of the bank, and a brother of the Endicott of Hitchcock & Endicott.

X-int. 19. Upon giving you information of the running away of the book-keeper, did he state from whom he obtained it? if yea, state;
217 and did he give any further information in regard to the affairs of Hitchcock & Endicott? if yea, state.

(Obj. to.)

Ans. He told me he got his information from Mr. Hitchcock, who called to see him for the purpose of getting him to telegraph for his brother who had been absent some time from the city; that his book-keeper had run away, leaving him a letter in which he stated that the affairs of the firm were not as he had represented them to be, and that he was going to run away in consequence. Mr. Hitchcock told Mr. Endicott, as I was informed by Mr. Endicott, that he believed the firm to be solvent notwithstanding this error or defalcation of the book-keeper, and he desired his brother's return that the books of the firm might be examined. I think that he, at that time, professed his own inability to make such examination.

X-int. 20. What was the amount of the alleged error, and was that included in the information given to Mr. Endicott, and by Mr. Endicott to you?

Ans. The amount of the error or defalcation, as I have been informed, was $10,000. I do not recollect that Mr. Endicott stated the exact or supposed amount to me at that time.

X-int. 21. Were you not informed, before you got out the capias, that the error was alleged to be $10,000 against the firm of
218 Hitchcock & Endicott in the statement of the firm's affairs annexed, marked "Exhibit B."

Ans. I think I was.

X-int. 22. Were you aware before the capias issued against Hitchcock, that Hitchcock & Endicott had given a judgment note for $1,300 and upwards to Hotchkiss Sons. If yea, from whom did you get that information *and from whom*?

Ans. I got the information about the time I commenced proceedings in the circuit court; I think before; I do not know from whom I got it.

X-int. 23. Was the $500 note of Hitchcock and Endicott due May 26, 1867, a judgment note?

Ans. I think it was; I cannot swear positively.

X-int. 24. Was any demand made on Hitchcock & Endicott for the payment of that note?

Ans. I think there was, but I don't recollect.

X-int. 25. What had been the line of credit of Hitchcock & Endicott at your bank before these notes (included in the judgment note) were given?

(Obj. to.)

Ans. The only line of credit that I recollect to have promised to them ever was fifteen hundred dollars, which credit was given and based upon the representations of their solvency and capital before spoken of at the time I commenced doing business with them.

219 X-int. 26. Were they not usually indebted to you more than that, and if so, how much?

Ans. After a time they owed me as high as $3,000, and then enough more to make the amount $4,500, I mean now upon direct loans.

X-int. 27. Had you been in the habit of purchasing their country drafts before the period alluded to?

Ans. I had been in the habit of purchasing their country drafts from the time I commenced business with them.

X-int. 28. How long had direct loans to the amount of $3,000 or $4,500 been made to them by the bank?

Ans. That I can only tell by reference to the books of the bank? On referring to the books of the bank, I find loans to the extent of $3,000 since the third of December, 1866; loans to the extent of $4,000 since 6th of March, 1867. I find loans to the extent of $4,500 since the 20th of March, 1867.

X-int. 29. Did you regard the error of $10,000 in the assets of the firm as shown by the statement marked "B" as affecting the pecuniary ability of Hitchcock & Endicott; if so, how?

(Obj. to.)

Ans. I did, because it was a large sum in itself and because I had reason to fear, as I stated before, that great negligence and in-
220 competency had been shown in the management of the business of the firm. I had reason to fear and did fear that the error or defalcation might be much larger than was represented to me.

X-int. 30. Did you regard the giving of the judgment note to Hotch-

kiss Sons as affecting the standing of Hitchcock & Endicott? Were you informed whether that note was on time, demand, or how; and did you form any opinion on it as a business transaction; and if so, what?

(Obj. to.)

Ans. I knew nothing of the Hotchkiss note until after I had been informed that the book-keeper had run away; I learned that it was on demand. It went to confirm me in the opinion of mismanagement in the business.

X-int. 31. Did the maturity and non-payment of the $500 note held by you create any opinion on your part as to the promptness of Hitchcock & Endicott in meeting their paper; if yea, what?

(Obj. to.)

Ans. It did not create any opinion. My opinion had been already formed. I already was of the opinion that they were not prompt.

X-int. 32. Were any of the notes you have enumerated as included in the judgment note extensions; if yea, which of them?

221 Ans. I do not know that any of them were extensions.

X-int. 33. Had any notes of Hitchcock & Endicott prior to that time to any amount been extended by the bank or were any prior notes included in whole or in part in either of the notes which went to make up the judgment note?

Ans. There may have been; I do not now recollect of any notes being extended; no prior notes were included in any of the notes which went to make up the judgment note.

X-int. 34. Was the money obtained on the note dated May 20th, for $1,500, or on either of the notes which you have stated in detail as being included in the judgment note used to take up any notes of Hitchcock & Endicott maturing at the time of the dates of their notes or either of them.

Ans. Such may have been the case; I think in the case of the note of May 20 it was.

X-int. 35. Will you examine your books and state what notes of Hitchcock and Endicott matured in March, April, and May, 1867, and how they were taken up, that is to say whether by the use of money loaned by the bank and to what extent?

Ans. I do not know that my books would furnish that information—all of it; I will bring what there is. I find that upon the 8th of

222 May a note matured for $1,000; I loaned them upon that day $500. I find on the 20th of May a note matured for $1,500; I loaned them $1,500 on that day. I find that on the 18th of March a note matured for $1,500; I loaned them $1,500 on that day. I find on the 6th of April a note matured for $1,500; I loaned them the same amount that day. It is possible that in making a new note it was dated a day or two after these dates.

X-int. 36. Were any of the notes included in the judgment note in question indorsed; and if so, by whom?

Ans. One of them was guaranteed by William F. Endicott, one for $1,500, the last direct loan I made to them, I think.

X-int. 37. Did you at any time before May 28, 1867, learn of the commencement of suit against Hitchcock & Endicott; if yea, when and how many?

(Obj. to.)

Ans. I heard of the commencement of one, I do not recollect the time, sometime before May 28th.

X-int. 38. When did you first have reason to suspect that Hitch-

223 cock and Endicott's management of business was incompetent and negligent?

(Obj. to.)

Ans. It was an impression that grew upon me during, perhaps, the last sixty days or so of my business with them.

X-int. 39. Did you hear of any other judgment notes than that held by Hotchkiss Sons against Hitchcock & Endicott?

Ans. I did not.

X-int. 40. Having been informed that Hotchkiss Sons held a judgment note on demand against Hitchcock & Endicott; knowing at the same time that a note for $500, given by them to your bank, was overdue and unpaid; and having heard that a suit had been commenced against them; believing that the management of their business was characterized by incompetence and negligence; having been informed that their book-keeper had run away, and that their assets were less by $10,000 than shown by the statements, marked "B," and having that statement in your hands, what, in view of all these facts and circumstances, was your opinion, before commencing your suit in the circuit court in which the capias was issued, of the ability of Hitchcock & Endicott to meet their commercial paper as it matured?

(Objected to.)

Ans. I do not know that I formed any opinion about it.

X-int. 41. Did you, in view of the facts and circumstances last detailed, believe that Hitchcock & Endicott could continue in business without failing?

(Objected to.)

224 Ans. It was represented to me that Hitchcock & Endicott claimed to be solvent, and able to pay all their obligations. I believed I had a right to try and collect my money. Whether or not, in doing that, they were forced to suspend, or should be unable to continue in business, was a question I did not consider necessary to bother myself about.

X-int. 42. But, as a business man, did you believe that Hitchcock & Endicott could continue in business without failing?

Ans. I believe that, if they had paid me off by raising the money from some other source, there would be nothing, so far as I was concerned, to prevent their continuing in business. I cannot tell how they might have been affected in consequence of their relations to others.

X-int. 43. When you took the judgment note in question did you intend to obtain judgment thereon at the earliest possible moment?

(Obj. to.)

Ans. I intended to use it in the way best calculated to serve my own interests.

X-int. 44. If Hitchcock & Endicott were, in your judgment, solvent on the 28th day of May, 1867, and you held judgment notes against them for the money you had advanced, and their other liability to you was as drawers of drafts or upon drafts which you had taken in

225 the usual course of business with them, why did you wish to merge all their liabilities to your bank, due and not due, in the judgment note in question?

Ans. Because, in consequence of the discovery of a fraud, I wished to have the matter placed in that shape.

X-int. 45. Did you fear that, if these notes included in the judgment note were not paid or secured at once, they might never be?

(Obj. to.)

Ans. No.

X-int. 46. Did you expect Hitchcock & Endicott, with the credit of $325 to their deposit account, with their book-keeper run away, a defalcation or error of $10,000 in their assets, and the judgment note of over a thousand dollars unpaid, and a note for $500 in your own bank due and unpaid, able to respond to your demand for $6,700 cash?

Ans. Not, unless they procured assistance from somebody.

X-int. 47. Did you believe, if the notes included in the judgment note were not paid or secured at once, you were nevertheless sure of getting your pay?

Ans. I believed that I had the right, in consequence of the fraud, to pursue the course which I did for the protection of my own interest; that it was right and proper for me to do it.

X-int. 48. You considered it necessary, then, to pursue the course that you did for the protection of your own interests?

(Obj. to.)

226 Ans. I did.

X-int. 49. You were not confident, then; you did not believe that the notes included in the judgment note would be paid as they matured?

(Obj. to.)

Ans. I have not said so.

X-int. 50. What, then, was your belief on that subject?

Ans. My belief was, that my interest would be promoted by embodying these claims in one note in the manner in which I did. Therefore I did it.

X-int. 51. Did you believe that the notes so embodied would be met by Hitchcock & Endicott as they matured?

Ans. It is out of my power to tell if they would have been or not.

X-int. 52. Did you have any reason to suspect or believe—did you suspect or believe that they would not?

Ans. If Hitchcock & Endicott should prove solvent, as they claimed, I should have had no reason to fear that the notes would not have been paid; if they should have been mistaken in their judgment in regard to their condition, and should have been insolvent instead of being solvent, as they claimed to be, I should then have run the risk of loss. My intention was, as I said before, to do all that I could to protect my own interest.

X-int. 53. But, in view of the facts and circumstances detailed in cross-int. 40, what was your opinion, as a business man, as to the prob-

227 abilities of their being solvent.

Ans. If the embarrassed relation of past-due paper, and inability to meet their obligations promptly as they matured, had been the result of an effort upon their part to transact a greater volume of business than their capital warranted, thereby becoming extended in their affairs, there is nothing necessarily in that condition involving bankruptcy or insolvency. It was represented to me that such really was their condition—I mean the effort to transact more business than their capital would justify; and that their inability to meet their engagements as they matured arose from that fact, but that they were perfectly solvent, and had assets sufficient to meet all their liabilities, and have capital over, besides the loss of the $10,000.

X-int. 54. What meaning do you attach to the words solvency & insolvency?

(Obj. to.)

Ans. I mean by the word "solvent," as applied to them, the posses-

sion of resources over and above, or at least equal to, liabilities. By the term "insolvent" I mean resources insufficient to cover liabilities.

Int. 55. You confine this definition to its application to them. Do you give it as your understanding of the meaning of the words generally?

Ans. Yes.

228 X-int. 56. The notes dated March 20 for $1,000, and April 8th for $1,500, were neither of them due on May 28th. Upon what ground, then, did you demand immediate payment thereof, as you have testified?

Ans. Upon the ground of the fraud. I used the power in my hands to accomplish the purpose which I desired.

X-int. 57. What was that purpose?

Ans. The payment of their indebtedness to the bank; security for it, or the judgment note.

X-int. 58. What was the power in your hands of which you speak?

Ans. The power of the law. Hitchcock testified that he signed the warrant of attorney rather than be arrested. That was the power I used.

X-int. 59. And you mean that that power to arrest was in your hands by reason of the alleged fraud?

Ans. I believed it to be so. I was so advised by legal counsel.

X int. 60. To what fraud do you allude?

Ans. The representations made to me verbally and in writing in regard to the condition of their affairs, which were not true, and by which I was deceived.

X-int. 61. Please state what representations were made verbally, & by whom, which were not true?

229 Ans. Mr. Edward M. Endicott represented to me at the time I commenced business with the firm that their condition was such as I have previously stated in the direct examination. That statement, I have reason to believe, did not represent the true condition of the firm. I believe now that Mr. Endicott was himself deceived in regard to the affairs of his firm.

X-int. 62. But what verbal representations had you discovered to be untrue, when you say the power of arrest was in your hands?

Ans. I said I believed the representations to be untrue, and that I was advised that the power of arrest was in my hands.

X-int. 63. When did you have reason to believe that any verbal representation that had been made was untrue?

A. When I discovered the fraud or error in the written statement.

X-int. 64. Did not Edward M. Endicott contribute $9,500 capital to the concern?

Ans. He contributed $9,500, as he stated to me, to the capital of the concern, which he believed went to form a part of the capital stock of Hitchcock & Endicott. Whether it ever really did so or not I do not know.

X-int. 65. In view of the facts and circumstances detailed in cross-int. 40, and your suspicions or belief that the verbal representations to which you allude were untrue, did you, on the 28th of May, have

230 any reason to suspect or believe that Hitchcock & Endicott's resources would be insufficient to meet their liabilities?

Ans. I had no information coming from them intimating any such state of things. I do not know that I had any suspicion or belief that their assets did not represent an amount equal to their liabilities.

X-int. 66. Will you please answer the last question?

Ans. I had no means of knowing anything absolutely about it.

X-int. 67. Did you have any reason to suspect or believe that their assets were insufficient to meet their liabilities?

Ans. No.

X-int. 68. Did the deficit of $10,000 in their assets furnish any reason, in your judgment, for such suspicion?

Ans. I could not tell whether the deficit of $10,000 would cover all the error or fraud or not. It furnished reason enough for me to believe I had better collect my money and close my business relations with them as soon as possible.

X-int. 69. Was not the alleged fraud on which you relied to justify the arrest of Hitchcock, that which is set up in the affidavit you made in the circuit court for the capias against him?

Ans. Yes.

X-int. 70. Even though you may have believed that the state-
231 ment, marked "B," was furnished you with the intention to deceive, yet, if Hitchcock & Endicott were solvent, why did you wish for a judgment note for the full amount at once?

Ans. Because, as I said before, I wanted to protect my own interest to the fullest extent I could.

X-int. 71. In aiming to obtain the judgment note in question, and when you had obtained it, did you intend to obtain judgment thereon by confession at the earliest practicable moment?

Ans. I intended to use it in such manner as I should think best. I did not have any time fixed when or how I would use it.

X-int. 72. Did you cause a demand to be made upon it the day after the evening on which it was given, and thereupon did you cause it to be entered up?

Ans. Yes.

X-int. 73. Did you not intend to cause it to be entered up within a short time after obtaining it, if you could get it?

Ans. I intended to use it just as soon as I thought it would be necessary, if it was necessary at all.

X-int. 74. What evidence did you get between the night of the 28th of May and the time when it was entered up on the 29th, of a necessity existing for that action?

Ans. I determined in my own mind, upon reflection on the morning of the 29th, that my interests would be better protected by making
232 the demand and entering up judgment in the event of payment being refused. This is the evidence that induced me to do it.

X-int. 75. Do you specifically deny that it was your intention, in seeking to obtain such judgment note, to make demand for its payment at once, and upon failure of payment to cause it to be entered up?

Ans. I said in answer to a question before, that I intended to use it just as soon as I thought necessary. I said in answer to another question that I did determine to make demand on the 29th, when I sent the demand for the money, or security, or a judgment note. I had no time fixed in my mind when I would make a demand for payment of the money.

X-int. 76. *I* what particular was your position towards Hitchcock & Endicott changed by the furnishing of statement, marked "B," on the 10th or 12th of May?

Ans. I should not have loaned them the $1,500 on the 20th of May, nor purchased any drafts after receiving their statement, had I known it to be untrue when I received it.

X-int. 77. If you had refused to advance money on the note of May

20, 1867, would it not have left a prior note of Hitchcock & Endicott to your bank due and unpaid, and in that case how was your condition changed except by the additional time given Hitchcock & Endicott to pay the amount in?

233 Ans. It would have left me in the position of enforcing payment, had it been necessary, on any note already due.

X-int. 78. When did you first take legal advice in reference to your claims against Hitchcock & Endicott?

(Obj. to.)

Ans. After the book-keeper run away, and after I got the information of the fraud, and before I commenced the suit in the circuit court by capias.

X-int. 79. Had you read the bankrupt law, so-called, on or before the 28th of May, 1867?

(Obj. to.)

Ans. I had.

X-int. 80. Had you discussed it with your counsel?

(Obj. to.)

. I had.

X-int. 81. Had you, before the capias was issued against Hitchcock, come to the conclusion in your own mind, or were you of the opinion, after taking legal advice, that a judgment note given the bank under pressure of legal process, or the importunity of the creditor, or the judgment on a note so given would be taken out of the operation of the bankrupt law?

(Obj. to.)

Ans. I was of the opinion, after reading the bankrupt law, with the annotations of the editor & compiler on the subject, and upon the advice and judgment of those learned in the law, that a judgment note obtained and executed in the manner described in the interrogatory,

234 would avoid all conflict with the operation of the so-called bankrupt law.

The further examination of this witness was adjourned to Saturday, the 15th of August, at which time the examination was resumed.

X-int. 82. Upon the giving of the judgment note was not the suit in which the capias was issued dismissed as soon thereafter as might be?

Ans. The records of the court will show. I have no personal knowledge of the proceedings had in the circuit court case after the judgment note was given.

X-int. 83. You say you had the capias delivered to the sheriff, with directions to arrest Hitchcock if the money or satisfactory security were not given. Were you willing, or did you intend to forego the arrest if the judgment note was executed by him?

Ans. I made no promises, that I recollect of, to forego any proceedings that I might choose to take under any circumstances.

X-int. 84. The question was not what promises you had made *or made*, but what your design or intention was. Please reëxamine the last question and answer it a little more responsively if you can.

Ans. My intention was to collect my money. I would have been willing to forego the arrest at that time to get my money, or

235 satisfactory security, or a judgment note.

X-int. 85. You have said you commenced suit in the circuit court with a view to collect your money as soon as might be. How did you propose to collect it through the judgment note?

Ans. After I had commenced proceedings in the circuit court, I concluded in my own mind that the object I had in view of collecting my money, could be as well carried out in the manner in which I proceeded afterwards as by carrying on the suit in the circuit court. I proposed to collect it through the judgment note, by using the powers which it gave, if it should become necessary, in my judgment, to do so, in carrying out the object which I had in view of collecting my money.

X-int. 86. Do you specifically deny that you had any intention of procuring this judgment note when you commenced proceedings in the circuit court?

Ans. I have specifically stated that all my proceedings were had with a view of protecting my own interests in the best way I could. I commenced proceedings in the circuit court in good faith to collect my money. All proceedings subsequently were carried on with a view of aiding the collection of my money and the protection of my interests.

236 X-int. 87. How did you propose to collect your money by the proceedings of the circuit court?

Ans. I believed that I had been the victim of fraudulent representations. I believed that by taking such legal steps as were necessary in view of the fraud which I believed to have been practised upon me, that the firm of Hitchcock & Endicott would be compelled to pay me the money, or secure it in some satisfactory manner, because I believed that the stigma attaching to Mr. Hitchcock in consequence of the alleged fraudulent representations practiced upon me, would induce him, or compel him rather, to do something to relieve himself from them by paying me the money at once, or satisfactorily securing the payment to me.

X-int. 88. Did you consider the giving of the judgment note satisfactorily securing the payment to you?

Ans. I considered it for my interest to accept the judgment note if I could not get the money or security absolutely for it.

X-int. 89. Had not the demand for the judgment note of which you have previously spoken been made before the proceedings were commenced in the circuit court?

Ans. It had, and I considered that when the demand for payment, or security on the judgment note, had been refused, it terminated my efforts to collect my money without process of law.

237 X-int. 90. In what contingency would the necessity arise spoken of in the conclusion of your answer to cross-int. 85?

Ans. In the determination in my own mind to do so.

X-int. 91. Did you suppose that after judgment was obtained on that judgment note, and execution issued, Hitchcock & Endicott would continue in business?

Ans. If Hitchcock & Endicott had paid the claim, I know of no reason why they might not continue in business, as far as my relations to them were concerned. Their continuing in business was a matter to be settled by themselves, and not by me.

X-int. 92. Did you suppose they would pay your claim?

Ans. I was informed that they did expect at one time to be able to do so.

X-int. 93. When were you so informed and by whom?

Ans. I think Mr. William F. Endicott told me that they expected, or hoped, to make such arrangement that would enable them to pay my claim. This was after the execution was placed in the hands of the sheriff, and they believed themselves, as I was informed, to be solvent, and able to satisfy some persons, whom I do not know, that they were

so, and thereby get the money to pay my claim, and be enabled to continue in business by arranging their liabilities to their other creditors upon a satisfactory basis.

238 X-int. 94. Was this after the levy of the execution?

Ans. I suppose it was.

X-int. 95. In consideration of the facts and circumstances within your knowledge, did you expect Hitchcock and Endicott to pay that judgment, and you obtain your money without the levy of the execution?

Ans. I do not recollect that I did expect to get my money after obtaining judgment, until after a levy had been had on the property. I did expect to get it out of the property if in no other way.

X-int. 96. You have said that the statement marked "B" was furnished you by Hitchcock upon your demanding a statement of him. Why did you so demand?

Ans. Mr. Hitchcock called at the office of the bank in response to an invitation from me. The object of that invitation was to see him and converse with him upon the affairs of the firm. I was unable to obtain from him anything in the way of a detailed statement from memory, of their condition. I therefore told him that I desired a written statement of the affairs of the firm, taken from the books of the firm, which statement he promised to furnish. The statement was delayed a few days, as he told me afterwards, in consequence of the book-keeper having been sick, or something of that sort, which had put their entries a little behind, but would be furnished at the earliest possible moment.

239 The statement signed "T. H., B-K." was handed to me by the book-keeper, who told me it was furnished in accordance with Mr. Hitchcock's promise to me.

X-int. 97. When was this first interview with Mr. Hitchcock of which you speak, and why did you send for him?

Ans. The interview was had on or about the 6th of May, 1867. I sent for him for the purpose of conversing with him upon the affairs of the firm.

X-int. 98. What reason had you for desiring to converse with him on the affairs of the firm?

Ans. Because I wanted to know what the condition of the firm was.

X-int. 99. What reason had you at that time for desiring to know the condition of the firm? Had you any particular reason? and if so, state it.

Ans. The particular reason that I had at that time was because I wanted to know what the condition of the firm was.

X-int. 100. Was there any special cause for your wanting to know—*you know?*

Ans. The firm were doing business with me upon a basis of personal credit. It is a habit and custom of mine to inquire occasionally of customers doing business with the bank, in regard to their affairs. Inquiries were occasionally made of me as to my opinion of the responsibility of this firm. I desired to be able to give such response to

240 those inquiries as would seem to be in my opinion right and proper, as well as to keep myself thoroughly informed of their responsibility and prosperity, because, as I said before, I was doing business with them upon a basis of personal credit to a large extent. What I mean by personal credit is, I loaned them money at different times upon no other security than their personal names.

X-int. 101. Had any inquiry been made of you or your bank respecting the responsibility of Hitchcock & Endicott about this time, & if so by whom?

Ans. Yes. There was one from a firm in Pittsburg—Fahnestock, Fortune & Co.

X-int. 102. Was it in reference to that inquiry that you desired the interview with Hitchcock, and the information from him respecting the condition of Hitchcock & Endicott? Did you so state to Hitchcock?

Ans. I told Mr. Hitchcock that I had such an inquiry in relation to them, and I talked with him about the character of his business with that house, and of his indebtedness to them. I told him, however, distinctly, that the object of my demanding this statement of him was for my own personal use, and that in view of my relations to the firm as a business man I should require such a statement.

X-int. 103. Did you have any particular cause, at the time in question for requesting this statement in question? If yea, what?

241 Ans. The particular cause that I had in demanding the statement in question was because I wanted it.

X-int. 104. Did Fahnestock, Fortune & Co., in making the inquiry in question, state the extent, and character, and situation of Hitchcock and Endicott's indebtedness to them? What did they state, if anything in relation thereto?

Ans. I have forgotten what their letter did contain beyond the general fact of the inquiry. I think, however, there was something in it, stating the nature of their relations to Hitchcock & Endicott. I think, too, that in my conversation with Mr. Hitchcock, he denied the relations to be as Fahnestock, Fortune & Co., stated them. I think he told me that he merely sold goods for them upon commission, that he did not owe for any property until it was sold; that he would be glad, if they would come and take out of their hands all the property there belonging to them. I am speaking now simply in a general way of my recollection of the circumstance, because I do not recollect anything specific of the contents of their letter.

X-int. 105. Did not Fahnestock, Fortune & Co. claim or state that an acceptance of Hitchcock & Endicott held by them would mature in May?

Ans. I do not recollect whether they did or not.

X-int. 106. Did they not afterwards write to you, and if yea, when?

Ans. I do not recollect ever receiving any other letter from them on the subject.

242 X-int. 107. Please find and annex the letter in question.

(Def't's sol'r objects.)

X-int. 108. Did you learn, before the 28th of May, that any such acceptance as is spoken of, was due and unpaid?

Ans. I have no recollection of any knowledge on the subject one way or the other?

X-int. 109. When did Edward M. Endicott return?

Ans. I do not know the date.

X-int. 110. Where and when did you first see him?

Ans. I did not see him to speak with him, and I do not recollect that I saw him at all—even to look at—until after the issue of the capias against Mr. Hitchcock. I did not speak to him that I know of, until after the levy of the sheriff.

X-int. 111. Had you been in the habit of requiring indorsements of Hitchcock & Endicott in making loans to them?

Ans. I had not.

X-int. 112. Was the indorsement of William F. Endicott of the $1,500 note of May, 20th, the only instance, and why did you require that?

Ans. I think it was the only instance. I required that because I had already loaned them as much as I considered it prudent to lend them

upon their capital, as represented, without security of some kind in addition to the responsibility of their own name.

243 X-int. 113. But this $1,500 note of May 20th was a renewal; was it not?

Ans. The note of May 20th, I think, was not the note guaranteed by Mr. William F. Endicott. I think the note of May 20th was another note. I think we may have got some confusion of dates in regard to the different notes as distinguishing the one indorsed by Mr. Endicott from the others.

X-int. 114. Which was the one indorsed by William F. Endicott?

Ans. I do not think that I can tell now the date of that note as distinguishing it from the others. The amount of the note was $1,500.

X-int. 115. Was it one of the notes included in the judgment note in question?

Ans. It went to form a part of the whole indebtedness of the firm *of* the bank.

X-int. 116. Was it surrendered to Hitchcock & Endicott on the giving of the judgment note or the rendition of judgment thereon?

Ans. I think I have before stated that all the notes were surrendered to Hitchcock & Endicott after the judgment note was given. Such was the fact.

X-int. 117. Did the judgment note, on which judgment was confessed, include all the indebtedness of Hitchcock & Endicott to the bank?

Ans. As far as I know, it did.

X-int. 118. It included then the note which William F. Endicott had guaranteed?

244 Ans. I think it did.

X-int. 119. Has the bank any such note now?

Ans. Not that I know of.

X-int. 120. Was not William F. Endicott good? If yea, what other security for the $1,500 did you require?

Ans. I believe William F. Endicott to be good. I required all the security that I could get.

X-int. 121. Why did you surrender the note guaranteed by him for $1,500? Why did you include it in the judgment note in question?

Ans. Because it formed part of Hitchcock & Endicott's liability to the bank. I surrendered all their notes when I took the judgment note. I did not want to hold Hitchcock and Endicott's notes for an amount that I had no claim upon against them.

X-int. 122. But why did you not take a judgment note for all, except the note guaranteed by William F. Endicott, and fall back upon the guaranty in case the latter note was not paid at maturity.

Ans. Because I preferred to do the way I did.

X-int. 123. Did anything pass between you and William F. Endicott in regard to this note? If yea, what? Was there any understanding between you as to a continuing liability on his part, in case the bank did not succeed in collecting the judgment?

Ans. I do not recollect that I had any conversation with Mr. Endicott whereby any such understanding was agreed upon.

245 X-int. 124. But was there any such understanding, express or implied, in regard to it?

Ans. I cannot tell what he may understand in regard to it.

X-int. 125. How is it with yourself?

Ans. I cannot tell that I have any understanding on the subject.

X-int. 126. In your affidavit for the capias in the circuit court, you state "that whatever judgment the said bank may obtain in the said

suit against the said Charles Hitchcock, will be in danger of being lost unless the said Charles Hitchcock be held to bail." To what danger did you then refer?

Ans. I believed Charles Hitchcock to have been guilty of fraud. I felt myself to be the victim of a fraud. I did not know, as I have before stated, nor could I tell whether the sum of $10,000, which I had been informed and believed to be already deficit in the affairs of the firm, would be all that might be discovered, or that might exist. I did not know what Mr. Hitchcock might do to escape any liability or penalties which he might have incurred by reason of any fraud which had been perpetuated, or to which he might be a party. I therefore felt great fear and apprehension that he would do something by
246 which my claim against him would be jeopardized or lost. For all I knew, he might run away.

X-int. 127. You have stated positively in the affidavit that the judgment which might be obtained, would be in danger of being lost unless he was held to bail. Was that allegation founded upon the belief that he might remove his property or run away?

Ans. That allegation was founded upon the belief that a man who would wilfully perpetrate upon another such a fraud as I believed to have been perpetrated upon me, would, upon anything which he might consider necessary, do that which would render any judgment against him valueless.

X-int. 128. How would holding him to bail obviate the danger?

Ans. I believed that by holding him to bail, if necessary, I could prevent his doing anything to bring about such loss. He would be in the custody of an officer of the law, which would prevent any such action upon his part, or would be obliged to furnish such security as would be satisfactory to the law that he would not do anything of the sort.

X-int. 129. Were you aware, on the afternoon of the 28th of May, that Hitchcock had evaded the arrest, or had absented himself upon the officer having presented himself?

247 Ans. I was informed that such was the case.

X-int. 130. It was after that, was it not, that Smith went over to Hitchcock's house?

Ans. It was.

X-int. 131. Did you, on the 28th day of May, 1867, and before you made the affidavit for the capias, believe that Hitchcock and Endicott were then in the condition to pay their debts in the ordinary course, as persons carrying on mercantile business usually do?

Ans. As I have before testified, I was informed that Hitchcock and Endicott had become extended in consequence of an effort to do more business than was warranted by their capital, & that, although having assets or resources sufficient to meet all their liabilities, and have capital over, I did not expect that they would be able to meet all their paper promptly as it matured.

X-int. 132. Did you individually believe that their assets were equal to their liabilities? Please answer yes or no.

(Obj. to.)

Ans. I had no means of judging or knowing, except what I was told. I therefore cannot answer yes or no, because I don't know that I had any individual belief about it.

X-int. 133. Do you consider a person solvent because, by reason of his resources being equal to his liabilities, his affairs may come
248 around, though he is not in a situation to meet his payments as usual?

(Obj. to.)

Ans. If a man's resources are equal to his liabilities, I should think him solvent, because I believe a man who can have property enough to pay his debts must be solvent. He cannot be anything else, in my opinion.

134. The error of $10,000 in the statement, marked "B," was in the amount of "bills payable," Hitchcock & Endicott having $10,000 more to pay than the statement showed. Did that, in your judgment, afford any reason to suspect or believe that the assets of Hitchcock & Endicott would prove insufficient to meet their liabilities?

Ans. I was not informed how or where the error or fraud occurred. I simply knew of the facts.

X-int. 135. If Hitchcock & Endicott were $10,000 worse off than that statement showed them to be, would that, in your judgment, afford any ground for doubt as to whether their assets were sufficient to meet their liabilities?

Ans. The statement showed a surplus of capital after paying all liabilities, after making allowance for the $10,000. There could not be upon that statement any different state of things than that Hitchcock & Endicott had assets enough to meet all their liabilities. They claimed that they had made little losses in their business, and that their assets were mainly all good.

249 X-int. 136. I again ask whether you had heard anything, or had any ground of suspicion, or entertained any suspicion of Hitchcock & Endicott in respect to their affairs, which induced you, about the 6th of May, to send for Hitchcock?

Ans. As I said before, my reason for sending for Hitchcock was to inform myself fully, from himself, in regard to the condition of the firm. I wanted to know, for my own knowledge and benefit, and, as I said before, to enable me to give right and proper answers to inquiries which were made of me in regard to their affairs. I have no other reasons, no other especial reasons nor causes, except those I have already testified to, that I recollect of, to give.

X-int. 137. In the notes enumerated by you as making up the judgment note in question, there are two of $1,500 each. Was one of these the one indorsed by William F. Endicott, and were not both of them renewals?

The further examination of this witness was adjourned to Wednesday, the 19th day of August, 1868, at 9 a. m., at which time the examination was resumed, and, in answer to the 137 cross-int., witness answered:

Ans. I find, upon conversation and examination, that there were two notes of $1,000 each, guaranteed by William F. Endicott; that,

250 upon the maturity of one of them, and it being paid, I reloaned them $500. The other note for $1,000 was not given to take up any other note that I know of. The $500 note was one of those included in the judgment note in question, and was guaranteed by William F. Endicott, and went with the $1,000 note to make up the $1,500, before spoken of as being guaranteed by William F. Endicott. I desire this testimony to be noted particularly, because I have before labored under the impression, from recollection, that the $1,500 testified to as being guaranteed by W'm F. Endicott, was all in one note. The $1,000 note, spoken of as guaranteed by William F. Endicott, was included in the judgment note in question.

138. When you loan money to take up a previous note, do you call it an extension, a renewal, or what?

Ans. I call it a fresh transaction when I loan money, when the party paid a note already due. If I loan them other money it is a fresh transaction.

139. How if the loan precedes the payment, or is agreed upon previous to the payment?

Ans. I do not think it makes any difference.

140. Did Hitchcock & Endicott, or either of that firm, know that any of their paper was guaranteed by W'm F. Endicott?

Ans. I presume they, both of them, knew it. I know certainly that Mr. Endicott knew it.

(The witness hereto produces the statement hereto annexed,
251 marked "Exhibit A.")

141. Can you give some idea when the $2,200 in drafts, shown by Exhibit A, matured? What I wish to know is when you probably received those drafts; how long it was your custom to hold such drafts for collection, and whether the $900 collected was so collected in due course, and whether the $1,200 and odd returned, were so returned because not collected in due course.

Ans. We were in the habit of taking from Hitchcock & Endicott drafts made by them upon various parties in the country, drawn for bills of goods purchased by these parties of them. These drafts would vary from being payable from one day to ten days after sight, consequently it is impossible for me to form any idea as to when these drafts, or any of them, would become due, much being dependant upon delay in the transmission in the mail and the promptness of the parties to whom they were sent, or otherwise. The $900 or thereabouts of the $2,207 was paid in due course, as far as I know. The $1,200, or thereabouts, returned unpaid, were returned also in due course, as far as I remember. It was our habit, when the drafts were returned unpaid, to notify Hitchcock & Endicott to come and take them up, which they would do in all instances, either by a deduction of the amount from their deposit or by giving a check on their deposit account for that purpose. I would
252 also state, in explanation of statement, marked "Exhibit A," that the $900 of drafts, marked as being paid, and the $1200 drafts, marked as being returned, went to make up the $2,200 before spoken of as being the amount of outstanding drafts included in the judgment note. The $900, all of it being collected subsequent to the giving of the judgment note. The $1,200 in drafts were also returned unpaid after the giving of the judgment note.

J. O. RUTTER.

253 "EXHIBIT A."—*Synopsis H. & E. with Traders Bank*, 28 *May* 1867.

ITEMS.

| | | |
|---|---|---|
| Outstanding collections per ..... | | 1,234 90 |
| Am't ret'd to H. & E. from hands of O. Smith, teller..... | | 1,264 20 |
| " paid to sheriff by " " " ..... | | 929 38 |
| " short per " " " ..... | | 13 85 |
| H. & E.'s notes held by b'k on 29 May, viz: dated | | |
| March 20; due 19 June..... | 1,000 00 | |
| Ap'l 8; " 10 " ..... | 1,500 | |
| May 8; " 26 May ..... | 500 | |
| May 20; " 22 July ..... | 1,500 | |
| | | 4,500 00 |

STATEMENT.

| | | |
|---|---|---|
| Am't outstanding | | 1,234 90 |
| " given up by teller, ret'd unpaid, held as cash | | 972 53 |
| " notes held as above | | 4,500 00 |
| May 29, '67, judgment note taken for | | $6,707 43 |
| Less indorsed H. & E. cr. bal. at bank | | 325 20 |
| Bal. of H. & E. note | | $6,382 63 |

TELLER'S MEMO.

| | | |
|---|---|---|
| Outstanding 28 May | 1,234 90 | |
| Given up by him | 972 53 | |
| | | 2,207 43 |
| P'd by him to sheriff | 929 38 | |
| Collection ret'd | 1,264 20 | |
| Short | 13 85 | |
| | | 2,207 43 |

254 Deposition of Joseph O. Rutter. "Exhibit A."

EXHIBIT B.

ASSETS.

| | |
|---|---|
| Merchandise on hand, and furniture & fixtures | $31,605 44 |
| Am't due on "m'd'se ledger" | " 6,299 95 |
| " " " "cash ledger" | " 3,858 97 |
| Cash on hand | 12 80 |
| | $41,777 16 |

LIABILITIES.

| | | |
|---|---|---|
| Due on "m'd'se ledger" | $1,830 77 | |
| " " cash " | "7,417 50 | |
| Bills payable | 19,949 83 | |
| | | 29,198 00 |
| | | $12,579 16 |

This is the net capital of the firm on the first day of Jan'y 1867, the individual accounts of the firm having been balanced & the balances carried to their capital acc'ts. The present state of affairs will, I believe, not materially differ from the above; if it does, it would, to all probability, increase the capital a little, from all I can judge.

T. H., *Book-keeper.*

Deposition of Joseph O. Rutter. Exhibit B.

255 *Dep. of Asa Williams.*

Asa Williams.

Deposition taken on the 11th day of August, 1868, when the said Asa

Williams, a witness on the part of the defendants, being first duly sworn, deposed and testified as follows:

Examined by John Mattocks, esq.:

Int. 1. What is your name, residence, and occupation, and age?

Ans. My name is Asa Williams; reside in Chicago; and I am out of business at the present time; I am 37.

Int. 2. What was your business on the 28th of May, 1867?

Ans. I was special deputy sheriff and bailiff of the recorder's court.

Int. 3. Was there a capias against Charles Hitchcock, and a summons against Edward M. Endicott, placed in your hands on that day for service; if so, what was done with them?

Ans. Yes; there was. They were issued from the circuit court of Cook County, Illinois. The capias I held in my possession somewhere about a month. I never could get service on Hitchcock. He ran away from me. I saw him once when I had the paper in my possession, but he slipped out of the back door. The capias, where we do not find a man, or arrest him, we generally destroy or throw into the waste basket. I have never seen the man since he went out of the back door. The papers were destroyed in some manner, and were never served—I mean the capias and summons.

4. Were you ordered to destroy those papers by any person?

256 Ans. I never was. It is a common custom of sheriffs or officers where we do not find a man the papers are generally destroyed or cast aside.

5. At the time the papers above referred to were placed in your hands were you verbally instructed to execute them?

Ans. Yes.

6. Why did you not do it?

Ans. For the simple reason that he run away from me.

Cross-examination by M. W. Fuller, esq.:

Cr.-int. 1. Were you in the habit of serving process from all the courts?

Ans. All criminal process and summons.

X-int. 2. Did you usually serve capiases issued in civil actions in other courts than the recorder's?

Ans. Yes; all courts.

X-int. 3. What time was this capias put in your hands to execute, and by whom?

Ans. It was in the fore part of the afternoon, and by the sheriff or his clerk.

X-int. 4. Was Mr. Rutter or Mr. Mattocks present at the time?

Ans. I do not know either of the gentlemen. I know this gentleman (indicating Mr. Mattocks) by sight. I think he came in just after the papers were given me to serve.

257 X-int. 5. Was he with you, or in the room where you were, when you saw Mr. Hitchcock?

Ans. I do not know that he was.

X-int. 6. Did you see Mr. Hitchcock more than once while you had the process against him?

Ans. I saw only once.

X-int. 7. Who was present on that occasion besides Hitchcock and yourself?

Ans. I don't know his name. It was some one who it was represented would point out Mr. Hitchcock to me. I think he said he was a relative of Hitchcock. He pointed out Mr. Hitchcock to me.

X-int. 8. Did he accompany you from the sheriff's office; if not, where did you first encounter him?

Ans. He did not accompany me from the office. I was directed at the sheriff's office to go to this place, and this gentleman would point out Mr. Hitchcock. I encountered him at the store.

X-int. 9. Who so directed you? Was not the name of this gentleman told you, and was it not Endicott?

Ans. My directions were from the sheriff's office—think from the sheriff, or one of the clerks. I was directed to go to the store, and I would then be directed and shown the person I wanted to arrest. They said parties would be there who would know me. I think the man they directed me to was a clerk, or relative, or some way connected with the partnership of Hitchcock & Endicott.

258 X-int. 10. Did they name the man they directed you to?

Ans. They did.

X-int. 11. What was his name?

Ans. I think it was Mr. Mattocks.

X-int. 12. Was the man to whom you allude as the clerk a relative, or some way connected with the partnership of Hitchcock & Endicott, Mr. Mattocks?

Ans. No. It would either be the attorney of the plaintiff, or some party who would show me Mr. Hitchcock.

X-int. 13. Were you informed of the name of the man who did point Mr. Hitchcock out?

Ans. I think Mr. Mattocks introduced me to the man at the door, and said he would point out Mr. Hitchcock.

X-int. 14. Were you informed where you could find Mr. Endicott to serve him?

Ans. I do not think I was, for the reason that I had not time to find Hitchcock. I was directed to arrest Hitchcock first. I found Hitchcock, but I only saw him about three minutes.

X-int. 15. After Hitchcock gave you the slip did you make any effort to find Endicott?

Ans. I did.

X-int. 16. Where did you go?

Ans. I tried to get what information I could, but I could neither find Hitchcock nor Endicott.

X-int. 17. Did you get any information from the plaintiff, or ap-
259 ply to the plaintiff for information in respect to the whereabouts of Endicott?

Ans. I don't recollect?

X-int. 18. Did you inform Hitchcock that you had a capias for him?

Ans. No; I could never get near enough to talk to him. I am satisfied that he knew I was an officer.

X-int. 19. Did you make any further or other effort to arrest Mr. Hitchcock; if so, what, and when?

Ans. Yes; immediately after my suspicions were that he was trying to escape me. I examined the building—the alleys—it is a very big building. I slashed r und the block four or five times, and I could not get any information, and could not find him. I saw him go to the water-closet. I saw him come out. When he came out, I started to meet him. He was coming towards me—that is, towards the front office. The back store was, I should judge, 150 feet, at least, from the front. I was in the office. I asked the young man where he was going. He said he was just going to the water-closet. When he came out, I opened the door of the office. He recognized me, and before I could get five steps—

there is a pair of stairs leading to the right of the water-closet—he went down those steps. I then first suspected that he was trying to get away from me. I jumped down the front stairs, on Randolph street, ran as hard as I could back to the alley in the rear of the store. I learned
260 from some passing by that there was a man seen running through the street. I then went into the rear of the store and inquired of the man at the windlass if he had seen Hr. Hitchcock. He said he was there just a minute ago, but he could not tell me where he went. I hunted all round the neighborhood—went to the Richmond House, the Massasoit—and could not find him. I could not get any information where he lived, or where he had gone to.

X-int. 20. Did you apply to the plaintiff or its attorney, to know where Mr. Hitchcock lived; and if so, when?

Ans. No, I did not.

X-int. 21. Did you hunt for Hitchcock any more that night?

Ans. No.

X-int. 22. Did you hunt for him the next day?

Ans. No; I did not.

X-int. 23. Why not?

Ans. I delivered my paper over to Gus. Fisher, deputy sheriff. I reported to him.

X-int. 24. When?

Ans. It was the next day. I might have seen him that night, but I do not think it was until the next day.

X-int. 25. Did you go back to the sheriff's office that night?

Ans. Yes.

X-int. 26. Did you go back into Hitchcock and Endicott's store after Hitchcock evacuated the premises?

Ans. I was round there for two hours, or in that neighborhood, trying to find the fellow—doing my best.

X-int. 27. Did you see Mattocks again that night?

261 Ans. I did not.

X-int. 28. Do you say that it is the custom in the sheriff's office not to return unserved process?

Ans. I say that in my experience it is the custom of deputy sheriffs to. I don't say destroy, but pass one side all criminal processes which are not served. We don't hold them as of any value.

X-int. 29. How with civil process?

Ans. Those we return; it is our duty to. It is in all cases, civil and criminal. I may have that process in my possession. I think Gus. Fisher has got it. I do not know whether he has or not.

X-int. 30. How did it happen that you abandonded all effort to arrest Hitchcock after the failure of your first attempt, as you have detailed it?

Ans. For the reason that when I first got the capias I was told in the office that the parties wanted Gus. Fisher to execute the writ. When I got through that night, until the time I saw Fisher, I turned the matter over into his hands. I don't know whether I gave him the writ or not. I can't recollect. I told Gus. the next morning that there were some parties at the sheriff's office for him to serve a writ. They were anxious to have it done that afternoon. I was the only deputy present. I took the papers and done my best. Gus. says, "All right." That ended the programme. I told him to go and see Mr. Mattocks.

262 X-int. 31. If you still held the capias, why did you not proceed to execute it?

Ans. For the reasons that I told you before. I turned the business over to Gustavus Fisher. If he wanted the capias I suppose I gave it to him. If he did not, I suppose it is lost.

ASA WILLIAMS.

*Dep. of E. M. Endicott.*

Edward M. Endicott.

On the 16th day of November, 1868, the said Edward M. Endicott, a witness on the part of the defendants, being first duly sworn, deposed and testified as follows:

Examined by John Mattocks, esq.

Interrogatory 1st. What is your name, age, residence, and occupation?

Ans. Edward M. Endicott; merchandise broker; and I reside in Chicago, and am of lawful age.

Int. 2. What was your business in May, 1867?

Ans. I was a partner of Charles Hitchcock, engaged in selling druggists' sundries in Chicago.

Int. 3. What was the value of the stock of goods in your store, May 29, 1867?

263 Ans. I think it was about $23,000, value of the stock in store.

Int. 4. Does this estimate include notes and accounts? If not, please state value of assets at that time.

Ans. It does not. I think the assets of the firm entire, were about $27,000, including everything. I arrive at the estimated value of the assets by taking the actual eastern value of the stock at that time, the outstanding accounts due us from the country, according to the original bills rendered to the parties to whom we sold.

Int. 5. Can you state what the liabilities of the firm were at that time?

Ans. I think that they were about $32,000 to $33,000.

Int. 6. What became of the goods above referred to?

Ans. The goods were sold on execution by order of the Traders' National Bank. I was not in Chicago at the time of the sale of the above-named goods, and therefore, I merely state from hearsay.

Int. 7. Were you in Chicago on the 39th day of May, 1867? and if so, how long previous to that time had you been in the city?

Ans. I arrived here on Tuesday previous to the 29th of May, after an absence of about six weeks.

Int. 8. Were you in Chicago, and did you sign and execute a judgment note to the Traders' National Bank on the 28th day of May, 1867? and if so, state the circumstances under which you executed the same.

264 Ans. I was in Chicago and did execute such a note. On the morning after my arrival, Mr. Smith, teller of the Traders' National Bank, called at our office and presented to me a judgment note, embracing, as he stated, all the liabilities of our firm to the said bank. I told Mr. Smith that I should sign no note of any description, as our book-keeper had absconded and we did not know exactly where we stood, though we fully believed our firm to be perfectly solvent and able to pay, dollar for dollar, what we owed. Mr. Smith returned with the note to the bank. About half-past five o'clock in the afternoon. Mr. Mattocks and Mr. Smith came into our office and called Mr. Hitch-

cock outside. In a few moments Mr. Hitchcock returned and told me that there was a constable with a warrant for our arrest on charge of fraud. I went to Mr. Mattocks and asked him what it meant. He assured me that what Mr. Hitchcock said was correct, and that unless we signed a judgment note the bank would execute the warrant. I asked Mr. Mattocks if he would allow me to go to my brother's store and consult with him as to what it was best for us to do under the circumstances. He told me that he would; that Mr. Hitchcock should remain in the office, and that he and Mr. Smith would go with me. On arriving at my brother's office, I told him, in the presence of Mr. Mattocks, what the Traders' National Bank threatened to do unless we
265 signed a judgment note. He advised me not to sign it, and I refused to do so. Mr. Mattock then said that they should proceed at once to make the arrest. My brother asked him if he really intended to lock us up unless we signed that note, to which Mr. Mattock replied, that was his instructions. I then asked Mr. Mattocks in case we signed that note if they proposed to enter any judgment on the note. To which Mr. Mattocks replied that he had no instructions to do so. With this understanding, that there should be no judgment, and that we would be allowed to go on and find out where we stood, and to avoid arrest, I reluctantly consented to sign the note.

(Complainant's solicitor objects to all of the foregoing answer which appears to be hearsay, on that ground.)

Witness continues: In going down stairs, to go to my brother's store, Mattocks said to me that he had a summons for me, and a capias for Hitchcock. I did not understand Mr. Mattocks to say before that he had a warrant for my arrest.

Int. 9. What do you mean by stating that with this understanding you executed the judgment note?

Ans. By Mr. Mattocks' answer that he had no instructions to do so, I inferred that the bank merely desired to get our liabilities into
266 one judgment note, and that no further proceedings would be had.

Int. 10. When you executed said judgment note, did you do so with intent, understanding, willingness, consent, or desire, to give said bank a preference, or with the knowledge, belief, or suspicion, that you were then insolvent?

(Objected to as leading & incompetent.)

Ans. I did not.

Int. 11. Please state what your object was in giving said judgment note?

(Objected to as leading, incompetent, and improper.)

Ans. My reason for giving the judgment note was to avoid any arrest of the firm of Hitchcock & Endicott, or any one of them, and consequent injury to our business and our reputations, and the probable destruction thereby of our credit, believing ourselves to be perfectly solvent, and able, after awhile, to go on with our business.

Int. 12. Were you familiar, at the time, with the condition of your business, so as to be able to judge whether or not you were solvent or insolvent?

Ans. I think that I was.

Int. 13. How do you account for the fact, as stated by you, that your liabilities were about $32,000, and your assets about $27,000?

(Objected to as incompetent, and because defendant has no
267 right to cross-examine his own witness.)

Ans. I have no doubt that our book-keeper had, in some way,

defrauded us, as he had misstated to us the condition of the books of the concern; and further, the account stock was taken at its actual eastern value, which was somewhat less than it had been, which made our assets smaller than we supposed they would be. Further, the statement of our book-keeper, as made to us, allowing the discrepancy which he said existed, showed a surplus of about $2,500 on the 1st of January, 1867.

Int. 14. At the time of executing said judgment note, did you believe that the statement referred to was substantially correct?

(Objected to.)

Ans. He made that statement, and afterwards stated that there was a deficiency of $10,000. Deducting the $10,000, I believed the statement was correct.

Int. 15. At or previous to the time of giving said note, had you any conversation or correspondence with the Traders' National Bank, or with any one acting for them, in relation to your indebtedness to said bank, except at the time and with the persons above mentioned?

Ans. I had not.

Int. 16. Was any agreement or understanding entered into between you and Hitchcock, or with any other person, that you should give the bank a judgment note or any preference in the collection of their claim?

268 (Objected to as leading and incompetent.)

Ans. Not that I recollect of.

Int. 17. Had there been any such understanding or agreement, would you have recollected it?

(Objected to for same reason, as int. 16, and because this is cross-examination.)

Ans. I am quite sure that I should.

Int. 18. At the time of giving said note, and previous to that time, who had the active charge of the business of your firm?

Ans. Mr. Hitchcock, as I had been east since the early part of April. Previous to that time I participated actively in the business.

Int. 19. During your absence, had you anything to do with the management of said business?

Ans. I had not.

Int. 20. Had you anything to do with furnishing the bank the statement above referred to, or was it done with your knowledge or consent?

Ans. No.

Cross-examination by Mr. Fuller:

Cr.-int. 1. When did you go East, prior to the obtaining of the judgment in question?

A. About the 6th of April.

Q. 2d. Why did you return?

269 A. I returned in consequence of a telegram received from Mr. Hitchcock.

X 3. What was the purport of that telegram?

A. As near as I remember, he requested me to return as soon as I could.

X 4 q. Whom did you first see upon your arrival?

A. William F. Endicott.

X 5. What information, if any, did he give you?

A. He merely said that our book-keeper had absconded, and that the concern in consequence was in trouble, not knowing how badly he had

victimized them. It was very early in the morning, 5 or 6 o'clock, Tuesday morning.

X 6. Whom did you next see?

A. Mr. Hitchcock.

X 7. Did you examine into the affairs of Hitchcock & Endicott, upon seeing Hitchcock, or make any inquiries as to what was due or coming due?

A. I made no further examination at that time than reading the statement which our book-keeper had made.

X 8. Upon examining that statement, were you informed that the bills payable were ten thousand dollars larger than appeared therein; or that there was any error, and if so, what, in such statement?

270 A. Mr. Hitchcock said to me that the book-keeper had sent him word the morning he absconded, that there was a mistake of ten thousand dollars in the statement made to the Traders' National Bank, and that the footing should be ten thousand dollars less, without stating where the error was.

X 9. Did you look over the stock on hand to see how it corresponded with this statement; & if so, when?

A. I did not at that time look over the stock, except in a general way, and no comparison was made until the sheriff deputy had taken the acc't of stock.

X 10. What had been the extent of your business from the first of Jan'y, '67, down to this time?

A. Up to the time I went away we had been doing a very fair business for that season of the year. During my absence Mr. Hitchcock several times that we were doing very well, and urged me to see that the goods we had ordered were rapidly sent forward.

X 11. When the ac. of stock was taken by the sh'f's deputy, did it not appear that there was some eight thousand dollars less stock on hand than the statement of Jan'y first showed?

271 A. It was not until after the whole thing was figured up, some two weeks afterwards, that we found that really the stock in the store was less than we had estimated it. We supposed that the entire assets of the firm were amply sufficient to cover its indebtedness.

X 12. How much stock had you bought, and how much had you sold, between the 1st of Jan'y and the 29th of May?

A. As the book-keeper had neither entered the bills, nor fully posted his books up to the time I went away, I could not now answer the above question definitely.

X 13. Did you not discover, when the acc't of stock was taken, that there were several thousand dollars shrinkage from the amount shown by the book-keeper's statement?

A. There was evidently some shrinkage, which, in a measure, was owing to the different methods of taking the acc't of stock. The acc't of stock on the 1 of Jan'y, was taken by our salesman, and not, as is usually the case, with that positive accuracy as to the values of the goods that was placed upon them by Mr. Hitchcock & myself in May, and further, the acc't stock, as taken by the sheriff's deputy, was carelessly and improperly done.

X 14. Was from Jan'y to May a dull season for your trade?

272 The month of Jan'y, Feb., & March, are not generally good months for trade.

X 15. How much did you put into that concern?

(Objected to by def't's att'y.)

A. Ninety-five hundred dollars, part of it in August, '66, and part of it about Oct. or Nov. of the same year.

X 16. Was any part of it advanced by the Traders' National Bank?

A. Not a dollar of it.

X 17. Did you execute, with Mr. Hitchcock, a judgment note to Hotchkiss Sons in March, 1867?

A. I did.

X 18. Had you executed any other judgment note? if so, what, & to whom?

A. We had given one or two judgment notes in the regular course of business for loans of money by the Traders' National Bank.

X 19. After you had seen W'm F. Endicott & Mr. Hitchcock did you have any interview with any one else in reference to the affairs of the concern? if so, whom—before giving the judg. note?

A. I did not, excepting with parties who brought in bills to collect, telling them merely that our book-keeper had absconded, and everything was in confusion.

X 20. What were the bills and the am't of which you speak?

A. The parties desired to buy a bill of goods to cover a trade
273 account of some small amount. We sold them a bill, but they never took the goods.

X 21. Did you see any one before you saw Smith & Mattocks, as you have testified in relation to what was due the Traders' National Bank?

A. I do not recollect of having seen any one in reference to it.

X 22. Had you no conversation with W'm F. Endicott before giving the judgment note, in reference to the claims of the Traders' Nat. Bank?

A. I have no recollection of having any such conversation.

X 23. When and where did you sign the judgment note which was given to the Traders' Nat. Bank?

A. At Hinsdale, Sibley & Endicott's office, at about—between half past 5 & 6.

X 24. How long had you been in town at this time?

A. About thirty-six hours.

X 25. Were you afraid of being arrested at this time?

A. I was afraid that the Traders' National Bank, implicating me, as I understood it, as a member of the firm, on the charges of fraud, would arrest me unless I signed that judgment note.

X 26. What charge of fraud was there upon which you were amenable to arrest in any aspect?

A. As I understood it in the brief time that I had to think of the matter at that time, the Traders' Nat. Bank charged the firm
274 of Hitchcock & Endicott with obtaining money from them by fraudulent representations.

X 27. Had you made any fraudulent representations?

A. I had not, to the best of my knowledge & belief, made any fraudulent representations, but, being a member of the firm, I considered myself in part responsible for its acts, and therefore as equally implicated in charges made against it.

X. 28. What fraudulent representations had the firm made?

A. I did not believe that the firm had made any such representations, knowing them to be fraudulent; but the charges were made, and it was for the bank to show their ground for the charges. There had been, unknowingly to us, misrepresentations of our condition, and how far we were legally responsible, I did not then know, nor was I allowed time for any investigation.

X 29. Who prevented you from taking time to investigate?

A. The Traders' Nat. Bank demanded that we should sign that note at once, under threats of arrest, for which purpose an officer was in our store.

X 30. You have testified that Mr. Mattocks informed you that the officer had a summons to serve upon you, and a capias upon Hitchcock. In what way, and where, and when, and by whom were you threatened with an arrest?

A. As the judgment note was valueless without my signature,
275 I understood and believed that unless I did sign that note, that the Traders' Nat. Bank would arrest me also.

X 31. Were you aware that a portion of the am't claimed by the bank and included in this note, was not due?

A. I presume that some of it was not.

X 32. How did it happen that you executed the note instead of waiting for your senior partner to do it?

A. It was customary for either partner to sign notes, and there was no understanding or arrangement as to which should sign first.

X 33. Did the Traders' Nat. Bank, or any one on its behalf, threaten you with arrest at your brother's store at the time you gave this note?

A. I understood Mr. Mattocks to say that unless I signed it he should proceed to make the arrest, and in reply to the question if the Traders' Bank would lock us up, to say that was his instructions.

X 34. Had you, during the thirty-six hours you had been in town, made any investigations whatever as to what was the situation of your firm?

A. I had not, except as before stated, examined the statement of the book-keeper, and in a general way look over the stock.

X 35. Did you examine to see what the concern had to pay?

A. I did not; I took Mr. Hitchcock's statement to me as to
276 the liabilities of the concern, which he took from the book-keeper.

X 36. Were you aware that the judgment note to Hotchkiss Sons was unpaid; did you make any inquiry about it?

A. No.

X 37. At whose request did you give a check to the bank for the balance of Hitchcock's & Endicott's deposit there?

A. I don't recollect.

X 38. Do you recollect when you gave it?

A. I don't recollect.

X 39. Were you aware that the warrant of att'y authorized the entry of judgment at any time after the note became due, and that the note was upon demand?

A. I was not aware what the warrant was. I understood the note to be upon demand. I also understood that the bank would not enter any judgment upon that note; otherwise I should not have given it.

X 40. If the bank had promised, or you had any grounds for an understanding that the bank would not enter up judgment upon that note, why did you object to signing it?

A. I objected to signing it because the bank already held our notes, and because I did not think that, in the peculiar condition of our affairs, it was right or just for the bank to ask us to sign a judgment note, or try to press us in any such unreasonable way; and it was only after I understood that their holding the judgment note would
277 affect us no differently from their holding our other notes, that I consented, under the pressure of the circumstances that they brought to bear upon us—signed the note.

X 41. Do you swear that you signed that judgment note from the fear of being yourself personally arrested?

A. I signed that note from the fear of being arrested myself; from the fear of having my partner arrested and thereby injure our reputations, stop our business, and destroy our credit.

X 42. You have testified that you believed Hitchcock & Endicott would be able to go on after a little while. In how long a time did you suppose they would be able to go on?

A. If the firm made a reasonably acceptable statement of its condition, I had friends who would render me necessary assistance to go on.

X 43. But as the matter stood, did you suppose that your commercial paper could be regularly met at maturity?

A. As I believed the firm to be able to meet its liabilities, I had no doubt that the necessary business arrangements, such as all houses in business make, could be made, and that we should meet our paper as it matured; of course based upon the statement of our liabilities as stated to me at that time by Mr. Hitchcock.

X 44. What did Mr. Hitchcock state to you at that time?

278 A. Mr. Hitchcock told me, as near as I can recollect at the present time, that the liabilities of the concern, he thought, were not over $25,000 dollars.

X 45. You regarded then, Hitchcock and Endicott, on the 28th day of May, when you gave the judgment note in question, as in a condition to pay their debts in the ordinary course as persons carrying on mercantile business usually do?

A. I did so regard them at that time.

X 46. You were not aware that any acc'ts, drafts, or notes had matured and were unpaid?

A. I was not so aware at that time, as I had not examined the books.

X 47. Did you have a book showing your bills payable?

A. Such a book was kept by our book-keeper, but I never saw it, nor have I seen it since my return from the East.

X 48. Did you examine any of the books of accounts of Hitchcock and Endicott before giving this judgment note?

A. I did not.

X 49. Were you aware that a note, held by the Traders' National Bank ag'st Hitchcock & Endicott, had matured before you gave this judgment note?

A. I was not.

X 50. Were you aware that a suit, other than that in favor of the Traders' Nat. Bank, had been commenced by one of the credit-
279 ors of Hitchcock & Endicott, before you gave this judgment note?

A. I do not now recollect that I was.

X 51. So far as you know then, on the 28 of May, the firm of Hitchcock & Endicott was regularly making its payments, was in good credit and laboring under no pecuniary embarrassments?

A. I believed the firm to be, at that time, perfectly solvent and able, in the ordinary course of business, to meet its liabilities; that its credit was good, because no one had ever refused to sell it. With the assistance of business men, usually obtained, it would go on and do a good business.

X 52. You said that on the 28 of May, you were sufficiently familiar with the affairs of Hitchcock & Endicott to determine whether that

firm was in a solvent or insolvent condition. What name do you attach to, and how do you define, solvency and insolvency?

A. I consider a firm to be solvent when they have every reason to believe, from the statement of their book-keeper, (their individual opinion,) that they have assets sufficient to cover their liabilities; when they can buy all the goods they require, and their credit is good; and when they have every reason to believe that they can do their ordinary business.

(All questions as to solvency objected to by def't's att'y.)

You regard a firm as solvent when it is generally unable to make its payments in the ordinary course of business?

(Obj.)

280 A. I regard a firm as solvent when its credit is not questioned, and when it is able, with the ordinary assistance rendered to all business firms, to do a satisfactory business.

X 54. You regard a firm as solvent when it is generally unable to make its payments in the ordinary course of business.

(Obj.)

A. I regard a firm as solvent when, in the ordinary course of business, it procures the customary loans, & is able with such loans, in addition to the capital at its command, and the profit of its business, to meet its paper according to agreement with the parties who may hold such paper.

X 55. Will you please answer the last question; yes or no?

(Obj.)

A. I do not consider that such an ans. can be made to such a general question. I think I have answered the question to the best of my ability.

X 56. Was the firm of Hitchcock and Endicott solvent or insolvent on the 28 of May, 1867, according to your present opinion?

(Objected to by def't's att'y.)

A. As I do not now know that the deficiency of $10,000, as stated by our book-keeper, did actually exist; as I do not believe that the sheriff's deputy took the ac. stock correctly or accurately, I cannot now say positively that the firm of Hitchcock & Endicott was not solvent on the 28 day of May.

X 57. When a firm finds itself unable to meet its outstanding
281 accounts, as they are presented for payment in the regular course of business; when its commercial paper is overdue and unpaid; when the bank, at which it does business, holds overdue paper ag'st it; when that bank has commenced suit ag'st it & demands a judgment note for all liability of the firm to it, including a portion of indebtedness not matured; when judgment notes are held by other parties ag'st such firm, and one suit, if no more, besides that of the bank, is commenced ag'st it, is, in your opinion, a firm, so situated, solvent?

(Objected to by def't's att'y.)

A. As almost every business firm has specific and particular arrangements with parties who hold its paper, as to its payment, I do not consider that its failure to pay it at maturity, by cash or check, proves that the firm is not solvent. I do not further consider that any illegal or unjust action on the part of its creditors is any proof that it is not solvent. I do not further consider the mere fact of a suit or suits being threatened or commenced by parties who have no reason for such action, is any proof that the firm is not solvent.

X 58. How long did you remain in the city of Chicago at the time you were here, when the judgment note was given?

A. I did not leave Chicago until the 29 of June, 1867.

X 59. Where were you staying during this period?

282 A. At 207 Michigan avenue.

X 60. Where did your brother reside at this time?

A. At the same house.

X 61. Did you go there directly upon your arrival, upon the morning of the Tuesday, of which you have spoken?

(Obj.)

A. I did.

X 62. Where did you first meet your brother?

A. As I had no room of my own, I went into his room to take off my things.

X 63. What did he say to you upon that occasion?

(Objected to.)

A. He said that the book-keeper had absconded, and that the firm was in some trouble in consequence; and further said that he was sorry on my father's account; and that is all the conversation that passed between us upon this subject.

X 64. Did anything else pass between you during the day before the judg. note was given?

A. I told him that the bank had sent Mr. Smith to our office demanding that we should sign a judgment note, which we refused to do.

X 65. When did you tell him this, & where?

A. At noon; I think at dinner.

X 66. Was that all that passed between you on that occasion?

A. All, except he said that he thought we had done perfectly

283 right, and advised us to sign no notes until we found out where we stood. This was all the conversation that passed between us, to the best of my recollection.

X 67. Where did you next see him?

A. I think at his office, about half past 5 o'clock, in the presence of the att'y of the bank.

X 68. What passed between you and your brother, then?

A. I told him that the bank had again sent down for us to sign that note, & that unless we did, that they would arrest us and lock us up; that I had refused to sign it, and asked him what he would advise that I should do, as I understood that the bank could carry out their threat.

X 69. What did he advise then?

A. He advised me not to sign it.

X 70. Did this transpire in the presence of the att'y of the bank?

A. It did.

X 71. Was anything stated by him in regard to locking you up?

A. I then asked Mr. Mattock if he should proceed to make the arrest and lock us up; to which Mr. Mattocks replied, that was his instructions; and further, I asked Mr. Mattocks if he intended, or if the bank intended, to enter up any judgment in case we signed the note; to which he replied, that he had no instructions upon that point.

284 X 72. Did you sign the judgment note in your brother's presence?

A. I do not think that my brother was in the office in which I signed the note. There are two offices; the conversation took place in the back office; the note was signed in the front office.

X 73. How much of what passed was in your brother's presence?

A. Everything referred to above, except the signing of the note.

X 74. Was he aware that you proposed to sign the note before you did so?

A. I cannot state what he thought, but I do not recollect whether he was aware of it or not; he made no evidence that he was.

X 75. Was there any other statement in respect to the entry of the judgment except what was given as coming from Mr. Mattocks?

Ans. There was none, so far as I remember.

X 76. You have stated that there was some person at the store during that day, to whom you stated that the book-keeper had absconded, and the affairs of the firm were in confusion. In what confusion were they?

Ans. What I meant by confusion was, that our books had not been posted, and that generally we would be obliged to stop business until we could find whether the statement made by him was correct, & take our account stock.

285 X 77. When did you return from the east, after the 29th of June, 1867?

A. I returned, I think, in the early part of Sept.

X 78. When did you first see Mr. Rutter, the president of the bank, in relation to the affairs of Hitchcock & Endicott?

A. I do not recollect that I ever had any conversation with Mr. Rutter in reference to the affairs of Hitchcock & Endicott.

X 79. Have you ever conversed with him in relation to this suit, or with any other person; & if so, whom?

A. I do not recollect that I have ever had any conversation with any one, specifically, upon this suit.

X 80. Are the assets of the firm of H. & E. stated with any accuracy in the bankrupt proceedings?

A. I think they are stated as accurately as they could be, considering that neither Mr. Hitchcock, nor myself, nor any one in our employ was allowed to take the account stock, and a part of the time were not even allowed to enter our office, or see the account, or the manner in which it was being taken by the she'f's deputies.

Direct resumed.

1 interrogatory. In stating that the assets of your firm amounted
286 to 27 or 28,000 dollars, or thereabouts, on the 28 day of May, upon what was your opinion based?

A. The assets and liabilities of the concern, as before stated by me, were taken from memorandums made after the acc't stock had been taken & figured by the sheriff, on the 28th day of May. I believe the assets to be from $32,000 to $35,000, and the liabilities about $25,000.

D. R. 2. At the time of giving the judgment note to the bank were you aware that the credit of the firm was impaired, or did you suspect that the said firm was insolvent, as you have defined the meaning of the term?

A. I was not aware that the credit of the firm was impaired, as we were buying goods in the regular course of business, and notes were being taken, and I had every reason to suppose that we would be able in a few days to go on with our business. By a few days I mean after we had taken our acc't stock and made our showing, which I supposed would show a surplus of about 6 to 7 thousand dollars, that is that, allowing a deficiency of ten thousand dollars, we should have made from Jan'y to May about $4,000, which opinion was based upon the fact that we had bought but few goods, & that we had been selling principally from our old stock, and therefore I did not believe
287 that our liability could be over $25,000, while our assets would be fully $32,000.

D. R. 3. In judging of the solvency of your firm, do you compute the value of your stock at New York or Chicago prices?

A. The estimate of the value of our stock had always been made liberally—at what it would cost to buy the same goods East, and put them upon our shelves.

D. R. 4. What rule did (the) you adopt in estimating the value of the stock at the time of the inventory by the sheriff?

A. We followed the above rule as near as we could at the time, but, in my opinion, memorandum of goods in store, made by the sh'f's deputy, was inaccurate and incorrect, and I think that there were more goods of certain kinds in the store. In my judgment, I think there must have been an error to the amount of $3,000 or over. I herewith annex the footing of the assets of the concern as made by us from the books furnished us by the sheriff. (Hereunto annexed, marked "2.") The values put upon the stock was made by us.

D. R. 5. Would it not be fair to consider your stock of goods at that time for the purposes of your business as greater than the amount for which they were inventoried? & if so, state how much.

(Objected to by pl'ff's att'y as leading & incompetent. Withdrawn.)

288 D. R. 6. Do you consider the inventory made by the sheriff, & appraised by you, as a correct estimate of the value of said goods for the purposes of your business?

(Objected to by pl'ff's att'y as leading and improper.)

A. I do not, because, as before stated, I think there were gross errors in the memorandum as taken, and because, for the ordinary purposes of our business, the stock was worth to us fully 30% more than the annexed statement; that is to say, that we intended to make from 25% to 30% by the sale of the goods in the ordinary course of business.

D. R. 7. At the time you gave the judg. note to Hotchkiss Sons what was your opinion of the condition of the affairs of your firm?

A. The judgment note to Hotchkiss Sons was given with the express understanding that it should last only for a week, until we could communicate with and hear from them in reference to their claims ag'st us, when the said judgment note should be given up, and we should give such other notes as we had written them we were willing to give; &, in my opinion, at that time, the firm was solvent, in good credit, and in a satisfactory condition.

8. In the conversation reported by you with your brother at the breakfast table, what was meant by an allusion to your father in connection with this matter?

(Objected to.)

289 A. My father had furnished me with $5,000 of the capital that I put into the firm.

Recross-examination:

X X 1. Q. Examine the statement, marked 2, and state how it is made up.

A. Merchandise refers to stock upon the shelves; samples, to the samples in possession of the salesmen; 5% is added for freight; sundries means office fixtures.

X X 2. Q. Do I understand you to say that 25% was the average profit upon sale of the goods?

A. I think that 25 or 30% was about the average profit that we figured to make.

Direct resumed:

D. R. R. 1. Q. Do you mean to state that Mr. Mattocks stated to you at your brother's store that he had instructions to arrest you if you did not sign the judgment note?

A. I did not understand Mr. Mattocks to say that he would arrest me then & there, but I had no reason to doubt from the course the bank was pursuing that, as the note was worthless without my signature, they would, if I refused to sign it, also arrest me, as I supposed
290 myself equally implicated in any charges of fraud which they had made.

EDWARD M. ENDICOTT.

STATE OF ILLINOIS,
*Cook County, City of Chicago, ss:*

I, J. Howland Thompson, a notary public in and for the city of Chicago, do hereby certify that the foregoing *that the foregoing* depositions of Joseph O. Rutter, Asa Williams, and Edward M. Endicott were taken before me on the days mentioned in the captions to said depositions, to be used and read in evidence on the part of the defendants in a cause now pending and undetermined in the United States district court for the northern district, in chancery, wherein George W. Campbell, assignee, is complainant, and the Traders' National Bank of Chicago and others are defendants, pursuant and under two stipulations annexed to depositions of Charles Hitchcock and others, taken before me in said cause, and filed herewith.

I further certify that said witnesses were duly sworn by me; that said depositions were reduced to writing by me or under my direction, and were read over to and signed by said witnesses in my presence.
291 I further certify that the exhibits attached to said depositions are the exhibits produced and referred to by said witnesses.

I further certify that said parties were present at the taking of said depositions—the complainant by Melville W. Fuller, esq., and said defendants by John Mattocks, esq.

In witness whereof I have hereunto set my hand and notarial seal, this 3d day of December, A. D. 1868.

[SEAL.] J. HOWLAND THOMPSON,
*Notary Public.*

[5-c. int. rev. stamp, cancelled.]

292 EXHIBIT "2."

| | | | |
|---|---|---|---|
| | Salesman—sample | | 1,645 42 |
| | Truck | | 200 00 |
| | Gen'l furniture & fixtures | | 1,174 00 |
| 539 54 | Office | | 788 81 |
| 586 72 | Office | | 368 04 |
| 817 49 | | | 12 00 |
| 848 73 | 4 table | | 40 00 |
| 817 09 | Chair | | 5 00 |
| 592 66 | New sign | 260785 | 20 00 |
| 339 53 | | | |
| 885 09 | | | |
| 504 67 | | | |
| 307 44 | | | |
| 362 89 | | | |
| 764 99 | | | |
| 396 23 | | | |

"2"

| | | | | | |
|---|---|---|---|---|---|
| | 672 53 | | | | |
| | 491 60 | M'd'se..... | 20,041 | 91 | |
| | 703 02 | Samples..... | 1,645 | 42 | |
| | 1,167 24 | | | | |
| | 1,323 23 | | 21,687 | 33 | |
| | 576 60 | 5 %..... | 1,843 | 36 | |
| | 590 52 | | | | |
| | 236 40 | | 23,530 | 69 | |
| | 350 35 | | 2,607 | 85 | sundries. |
| | 895 82 | | | | |
| | 559 79 | | $26,138 | 54 | |
| | 946 32 | | | | |
| | 757 24 | | | | |
| 293 | 777 40 | | | | |
| | 1,079 76 | | | | |
| | 415 89 | | | | |
| | 795 23 | | | | |
| | 20,041 91 | in m'd'ze. | | | |

Deposition of Edward M. Endicott. Exhibit "2."
(Endorsed:) Filed Dec. 22d, 1868, W'm H. Bradley. cl'k.

294 In district court of the United States in and for the northern dist. of Illinois.

GEORGE W. CAMPBELL, ASSIGNEE, &C., COMplainant,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO, Def'ts. } In equity.

Be it remembered that, upon the hearing of this cause, the complainant was called as a witness and testified that immediately upon being appointed assignee of the estate of Hitchcock & Endicott, bankrupts, he demanded of the sheriff of Cook County the goods and chattels of said Hitchcock & Endicott levied on by said sheriff, under executions against said Hitchcock & Endicott, and said sheriff refused to deliver up the same. It was admitted by the def'ts that George W. Campbell, the complainant, was only appointed, selected, and chosen assignee of the bankrupts in question on August 21st, A. D. 1867, and that the petition in bankruptcy of Hitchcock & Endicott was filed in this court, June 20th, 1867, and the petition in bankruptcy
295 against Hitchcock & Endicott was filed June 25, 1867. The complainant also offered in evidence in connection with the depositions of Charles Hitchcock the schedules attached to the petition in bankruptcy of Hitchcock & Endicott, showing their assets & liabilities; which are in the words & figures following, to wit:

No. 3.—*Petition and schedules of Charles Hitchcock and Edward M. Endicott.*

To the Honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois:

The petition of Charles Hitchcock and Edward M. Endicott, of the city of Chicago, in the county of Cook, and State of Illinois, and district aforesaid, respectfully represents: That the said Charles Hitchcock and Edward M. Endicott, copartners, transacting business in the said city of

Chicago, in the county of Cook, and State of Illinois, and in said district, have been for the six months last past and immediately preceding the filing of this petition, residents and doing business at Chicago, within said judicial district; that the members of said copartnership owe debts, exceeding the amount of three hundred dollars, and
296 are unable to pay all their debts in full; that they are willing to surrender all their estate and effects for the benefit of their creditors, and desire to obtain the benefit of an act, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That the schedule hereto annexed, marked "A," and verified by their oaths, contains a full and true statement of all the debts of said copartnership, and as far as possible, the names and places of residence of their creditors and the further statements concerning such debts required by the provisions of said act.

That the schedule hereto annexed, marked "B," verified by their oaths, contains an accurate inventory of all the estate of said copartnership as required by the provisions of said act.

And said Charles Hitchcock further states that the schedule hereto annexed, marked "C," verified by his oath, contains a full and true statement of all his individual debts; and as far as possible the names and places of residence of his creditors; and the further statements concerning such debts required by the provisions of said act; and that the schedule hereto annexed, marked "D," verified by his oath, contains an accurate inventory of all his individual estate as required by the provisions of said act.

297 And said Edward M. Endicott further states that the schedule hereto annexed, marked "E," verified by his oath, contains a full and true statement of all his individual debts, and as far as possible, the names and places of residence of his creditors, and the further statements concerning such debts required by the provisions of said act; and that the schedule hereto annexed, marked "F," verified by his oath, contains an accurate inventory of all his individual estate as required by the provisions of said act.

Wherefore your petitioners pray that, after due proceedings had, they may be adjudged by a decree of the court to be bankrupts within the purview of said act; and upon their compliance with all the requirements of the said act, and all the orders and directions of the court made in pursuance thereof, they may be severally decreed to have a certificate of discharge from all theirs debts, provable under said act, and otherwise entitled to all the benefits thereof.

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

WALKER & DEXTER,
*Nos. 5, 6, & 7, Portland Block, Chicago, Solicitors.*

298 UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

We, Charles Hitchcock and Edward M. Endicott, the petitioners, debtors mentioned and described in the foregoing petition, do hereby severally make solemn oath that the statements contained therein in relation to the copartnership matters of these affiants are true, according to the best of our knowledge, information, and belief; and I, the said Charles Hitchcock, do further make solemn oath that Schedule "C" contains a full and true statement of all my debts, and that Schedule

"D" contains an accurate inventory of all my individual estate, both real and personal, to the best of my knowledge, information, and belief; and I, the said Edward M. Endicott, do further make solemn oath that Schedule E contains a full and true statement of all my debts, and that Schedule "F" contains an accurate inventory of all my personal estate to the best of my knowledge, information, and belief; and we do further severally make oath that we are citizens of the United States of America, and that we will bear true faith and allegiance to the same.

CHARLES HITCHCOCK, *Petitioner.*
EDWARD M. ENDICOTT, *Petitioner.*

299 Subscribed and sworn to before me this 19th day of June, A. D. 1867.

[SEAL.] PHILIP A. HOYNE,
*U. S. Com'r, N. D. Ills.*

*Statement of all creditors who are to be paid in full or to whom priority is secured according to the provisions of the 28th section of said act.*

| Order of payment. Preferred claims. | Names of creditors. | Names of creditors. | Residence. | Am't. | Where and when. | Nature & consideration of debt, &c. |
|---|---|---|---|---|---|---|
| 1<br>Debts due U. S. & taxes & ass'ts under laws thereof. | Internal rev. | 0 | Chicago. | 20 00 | Chicago. | Sale of goods. |
| 2<br>Debts due to State of Illinois. | | | | | | |
| 3<br>Wages due clerk, servant, &c.<br>Not exceeding $50, &c. | Geo. A. Craft.<br>Jos. Wolfenselte.<br>J. B. Eman.<br>S. D. Hinman.<br>C. F. Hinman.<br>A. W. Baily.<br>J. M. Mott.<br>J. B. Ostrander.<br>Harlow Gilbert. | | | | | |

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

300 SCHEDULE A.—*Claims of creditors unsecured.*

| Reference to ledger. | Names of creditors. | Residence & occupation. | Am't. | When & where contracted. | Nature & consideration of debt & whether any judgment, bond, bill of ex., promissory notes, &c., & whether contracted with any other person; & if so, with whom? |
|---|---|---|---|---|---|
| Ledger. | Herewith annexed in full<br>Traders' Nat. Bank,<br>W'm Gates,<br>Greenbaum,<br>& Foreman,<br>Hotchkiss<br>& Son. | Ditto.<br>Chicago.<br>Matches "<br>"<br>Bankers<br>Merchants,<br>New York. | Ditto.<br>6,800<br>950<br>100<br>1,335 | Chicago.<br>"<br>"<br>"<br>" | Copartnership.<br>Judgment obtained.<br>" "<br>" "<br>" " |

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

301 *Liabilities of Hitchcock & Endicott.*

| | | | | |
|---|---|---|---|---|
| **OPEN ACCOUNTS.** | | | | |
| Kidder & Co. | Chicago | $ 17 | 36 | Stationers. |
| Colgate & Co | New York | " 173 | 74 | Soap Manu'f'u'r. |
| C. H. McCormick & Bro. | Chicago | " 333 | 33 | Rent. |
| Cox & Brandt | " | 68 | 20 | Inks, &c. |
| J. S. Kirk & Co. | " | 30 | 62 | Soaps, &c. |
| H. M. Crane | Schenectedy, N. Y. | 171 | 82 | Twines. |
| Ingalls & Co | New York | 86 | 43 | " |
| Bradley & Smith | " " | 318 | 92 | Brushes. |
| L. H. Butler | Chicago | 18 | 27 | Pickles, &c. |
| F. M. & W. A. Shepherd | " | 41 | 73 | Rubber goods. |
| Eastham, Harvey & Morris | Boston | 41 | 71 | Brushes. |
| Oriental Powder Co | Chicago | 14 | 00 | Powder. |
| Cathedral church treas | " | 185 | 49 | |
| J. E. Eastbrook | Rutland, Mass. | 40 | 00 | Manufacturer. |
| Guggerheim, Drufuss & Co. | Philadelphia | 87 | 00 | Blueing. |
| Beck & Worth | Chicago | 9 | 20 | Tobacco. |
| J. M. W. Jones | " | 52 | 35 | Stationer. |
| W'm Gates | " | 350 | 31 | Matches. |
| Tho's G. Chase | " | 29 | 41 | Mucilage. |
| Terry Bros. | Unknown | 40 | 65 | Glass. |
| J. S. Mason & Co. | Philadelphia | 130 | 12 | Blacking. |
| M. A. Goodenough | New York | 299 | 98 | Feather dusters. |
| Jos. Dixon & Co. | " | 262 | 50 | Stove polish. |
| J. C. Miller | Chicago | 10 | 50 | Box maker. |
| W'm Storer, jr | New York | 90 | 10 | Twine. |
| Alexander Nova | " | 123 | 25 | Perfumery. |
| H. M. Keyser & Co. | " | 602 | 25 | Notions. |
| Jevene & Almini | Chicago | 7 | 31 | Artists. |
| 302 Seymour, Carter & Co. | Chicago | 9 | 40 | Merchants. |
| Bowen Bros.—rent | " | 333 | 33 | Landlord. |
| T. L. Miller | " | 112 | 87 | Insurance. |
| Elliot & Therlen | " | 65 | 00 | Carpenters. |
| Portland Match Co. | Portland, Me. | 112 | 80 | Matches. |
| S. Draper & Son | Troy, N. Y. | 47 | 25 | Fish lines. |
| E. V. Welch & Co. | | 344 | 44 | Feather dusters. |
| Wylie & Armour | Chicago | $28 | 38 | Paints. |
| Thomas & Co | " | 32 | 96 | Pickles. |
| Stanbro. Warren & Co | " | 21 | 75 | Paints. |
| John Allston | " | 32 | 76 | " |
| D. M. Richardson | Detroit | 78 | 50 | Matches. |
| C. B. Woodworth & Son | Rochester | 64 | 30 | Perfumery, less 37 50 ac. |
| Ja's McQuaide & Bro | Lansingburg, N.Y. | 49 | 20 | Brushes. |
| Burnham & Van Shaack | Chicago | 26 | 66 | Druggists. |
| Henshaw, Faulkner & Co | New York | 296 | 17 | Notions. |
| B. L. Fahnestock, Fortune & Co. | Pittsburg | 82 | 16 | Glass. |
| Hotchkiss Sons | New York | 118 | 92 | Hardware. |
| Sun Match Co. | " | 628 | 60 | " |
| S. B. Merrell & Co. | " | 18 | 10 | Combs. |
| W. D. Brooks & Co. | Rochester | 16 | 04 | Brushes. |
| E. T. Smith & Co. | New York | 65 | 55 | Perfume. |
| Longley & Bro. | Cincinnati | 217 | 60 | Playing cards. |
| G. W. Stoekel | Pittsburgh | 48 | 24 | Glass. |
| Ames & Bardwell Man'g Co | N. Y. | 375 | 49 | P'k't books. |
| Gillett, McCullock & Co. | Chicago | 135 | 95 | Perfumes. |
| T. Y. Davis | " | 88 | 17 | Agent. |
| J. C. Davis & Co. | " | 131 | 54 | " |
| N. W. Glass Co | " | 55 | 91 | |
| 303 M. Kafer | " | 9 | 25 | Brushes. |
| C. A. Taylor | " | 11 | 00 | Trunks. |
| J. Rumbold & Co. | " | 5 | 00 | Liquor ex't. |
| Wheeler and Hinman | " | 8 | 08 | Paper bags. |
| Jacob Berk | " | 20 | 00 | Harness maker. |
| A. D. Terry, ag't | " | 17 | 50 | Brooms. |

| | | | | |
|---|---|---|---|---|
| Tho's Morrissey | " | 3 | 25 | Wax. |
| C. H. De Forest & Co | " | 167 | 97 | Notions. |
| R. H. Gillett & Bro | " | 3 | 05 | " |
| Cupples & Marston | " | 64 | 03 | Woodenware. |
| Knowles, Cloyes & Co | " | 8 | 57 | Spices. |
| Jones & Price | " | 100 | 35 | Wire. |
| H. S. Doane & Co | Boston | 938 | 30 | Brushes. |
| Peoria Starch & Co | Peoria | 750 | 00 | About. |
| Reed & Doane | Chicago | 5 | 62 | Brushes. |
| Fred. Jewett | " | 88 | 65 | Hardware. |
| H. C. Landon | " | 8 | 70 | Notions. |

304

BILLS PAYABLE.

| | | | |
|---|---|---|---|
| Brushes | H. S. Doane & Co. | Boston, Mass. | 2,512 85 |
| " | Eastham, Harry & Mones | " " | 3,912 04 |
| Salesman | S. D. Hinman | Baraboo, Wis | 273 44 |
| Glass | B. L. Fahnestock, Fortune & Co. | Pittsburgh, Pa | 2,324 02 |
| Pickles | L. H. Butler | Chicago | 400 00 |
| | Woods & Co. | " | 2,631 21 |
| Hardware | Kellog & Dauchey | New York | 157 25 |
| Notions | Henry Levy & Bro | " | 467 64 |
| " | Henshaw, Faulkner & Co. | " | 940 70 |
| Pipes | Louis Saarlacht Schwarz | Phil'a, Pa | 870 64 |
| Twine | H. M. Crane | *Schennetedy*, N.Y. | 64 35 |
| | T. Hempel | Chicago | 350 00 |
| Glass | A. & D. H. Chambers | Pittsburgh, Pa | 142 00 |
| Banker | Lawrence & Co. | New York | 1,000 00 |
| Soap | McKeeon, Van Haagen & Co. | Philadelphia | 550 50 |
| Brushes | Bradley & Smith | New York | 381 38 |
| | Thomas Miller, assignee | Chicago | 167 67 |
| Matches | W'm Gates | Chicago | 592 09 |
| Soap | Ja's S. Kirk & Co | " | 908 36 |
| Salesman | A. W. Bailey | Marengo, Ill. | 125 00 |
| " | C. F. Hinman | Fairbury, Ill | 83 66 |
| P'k't books | Ames & Bardwell M'k Co | New York | 108 43 |
| Perfumery | R. & G. A. Wright | Philadelphia | 318 15 |
| | Peoria Starch Co | Peoria, Ill. | 990 66 |
| Salesman | J. Borskander | Marengo, Ill. | 196 20 |
| Extracts | Gillett, McCulloch & Co | Chicago | 355 69 |
| Envelopes | Berlin & Jones | New York | 234 17 |
| Liquor | J. Rounfield & Co. | Chicago | 67 25 |
| 305 Hardware. | Hotchkiss Sons | New York | 1,335 27 |
| Blacking | Frank Miller & Co | New York | 495 55 |
| | | | 76 57 |
| | | Balance | 418 98 |
| 1 | Traders' National Bank | Ab't | 6,800 00 |
| Hardware | Hubbard & Spencer | Check | 59 05 |
| Glass | Bakewell, Pears & Co | " | 262 07 |

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

5

| | | | |
|---|---|---|---|
| Grocers | Shores, Staley & Co | Chicago | 30 40 |
| Boxes | Hopson & Co | " | 3 08 |
| Druggist | Lord & Smith | " | 148 98 |
| Notions | Barnum Bro's | " | 1 94 |
| Paper | Laflin, Butler & Co | " | 2 70 |
| Paints | Lewis Ham & Co. | " | 3 95 |
| Brooms | Ja's Wright | " | 19 75 |
| Stoves | Cross, Dane & Westlake | " | 3 21 |
| Druggist | Smith & Dwyer | " | 24 25 |
| Knives | Johnson, Spencer & Co | " | 3 70 |
| Soap | Wisley Bro's & Allen | " | 124 90 |
| Agent | Henry Hoffman | " | 45 00 |

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

306 UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

On this 19th day of June, A. D. 1867, before me, personally came Charles Hitchcock. and Edward M. Endicott, the persons mentioned in, and who subscribed to the foregoing petition and schedule, marked "A," respectively, and who being by me first duly and severally sworn, did declare the said schedule to be a statement of all their debts, &c., in accordance with the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

[SEAL.]

PHILIP A. HOYNE,
*U. S. Com'r, N. D. Ill's.*

307 (2.)—SCHEDULE B.—*Personal property.*

| | | |
|---|---|---|
| *a* | Cash on hand | None. |
| *b* | Bills of exchange, promissory notes, or securities of any description | " |
| *c* | Stock in trade in business of merchants at 27 & 29 Randolph st., Chicago, of the value as per schedule annexed | $25 379 56 |
| *d* | | None. |
| *e* | | " |
| *f* | | " |
| *g* | | " |
| *h* | | " |
| *i* | | " |
| *k* | | |
| *l* | Schedule annexed. | |

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

308 *Inventory of stock of Hitchcock & Endicott.*

| | | |
|---|---|---|
| 1,231½ | doz. | assorted fancy soaps. |
| 600 | lbs. | " " " |
| 221½ | doz. | " pomades. |
| 15⅝ | " | cosmetics & washes. |
| 22⅔ | " | tooth powders. |
| 324 | " | hair oils. |
| 121⅔ | " | flavoring extracts. |
| 14½ | " | lip & eye salves. |
| 595¾ | " | ass'd handkerchief extract. |
| 12¾ | " | smelling salts. |
| 154⅝ | " | colognes. |
| 6½ | " | rouge. |
| 13⅓ | " | cocoaine. |
| 51⅓ | " | lilly white. |
| 309 24½ | " | mucillage. |
| 30 | | G. D. caps. |
| 12½ | lbs. | indigo. |
| 117 | " | " |
| 37½ | doz. | buckles. |
| 67 | " | shawl pins. |
| 36¾ | " | lead pencils. |
| 30½ | " | cachous. |
| 19⅓ | " | pincers. |
| 143 | doz. | key rings. |
| ⅝ | " | watch chains |
| 5⅔ | " | puffs. |
| 400 | | slate pencils. |
| 8 1/12 | doz. | pink saucers. |
| 2⅔ | " | court plaster. |
| 11¾ | " | shaving cream. |
| 410⅙ | " | combs. |
| 3½ | " | marking ink. |
| 116⅔ | " | fish lines. |
| 253⅝ | " | blueing. |
| 4½ | " | camphor ice. |
| 5½ | " | castor oil. |
| 70 | " | wallets, purses, & p'k'tbooks. |
| 24½ | " | assorted inks. |
| 190¾ | " | " pipes. |
| 60 | " | perfume boxes & baskets. |
| 101½ | " | pl'ying cards. |
| 8 | " | needle cases & toilet boxes. |
| 36¾ | | " chalk lines. |
| 28,000 | | quill toothpicks. |
| 6 | doz. | spring balances. |
| 15¼ | " | shaving brushes. |
| 184 | box. | gum. |
| 149⅓ | doz. | penholders. |
| 15⅝ | " | memorandum books & pocket albums. |
| 13⅙ | " | scissors. |
| 5½ | rm's | letter paper. |
| 2½ | doz. | puff boxes. |
| 20½ | " | mirrors. |
| 44 5/12 | " | ass'd twine. |
| 220½ | lbs. | " " |
| 513 5/12 | doz. | blacking. |

310
305 gross pens.
286 " tacks.
40 " stove polish.
82 doz. hair brushes.
165 5/12 " tooth "
26 5/12 " nail "
18 1/4 " lather "
438 1/2 " shoe "
33 3/8 " horse "
207 1/2 " whitewash "
135 1/12 " paint "
4 1/3 " camel's hair "
10 5/12 " stencil "
134 marking "

311
9 5/6 " pocket knives.
13 2/3 " razor straps.
77 7/12 " lamp wicks.
11 " crumb brushes.
3 5/6 " shoe monkeys.
1 5/12 " seam brushes.
4 5/12 " brick stripers.
7 " mane brushes.
6 1/2 " wall "
1 1/12 " window "
3 " kalsomine "
5 3/8 " feather counter.
3 1/12 " " picture.
1 1/2 " " toy.

312
6 stamp boxes.
20 tobacco "
12 qr's sand paper.
1/2 doz. lanterns.
1 1/2 " hand bells.
8 1/2 " chimney cleaners.
1 " potato-mashers.
1 " butter stamps.
9 doz. wagon greese.
230 lb. nails.

25 1/3 " cloth "
27 3/12 " brush brooms.
65 9/12 " scrub brushes.
16 5/12 " dust "
79 " stove "
59 1/2 " varnish "
68 3/12 " sash "
11 1/4 " feather dusters.
13 1/3 doz. cork screws.
10 " mustard.
35 9/12 doz. "
19 1/3 " penknives.
8 1/2 " starch polish.
3 3/8 " toilet cases.

6 doz. stamp boxes.
6 1/2 " horse cards.
34 1/2 " cattle "
120 lbs. vaxerne candles.
17 doz. curry cards.
500 balls shoe wax.
243 5/12 gross matches.
225 lbs. pepper.
505 " cream tartar.
310 3/3 doz. curry combs.
78 1/3 " ass'd spices.
168 lbs. shoe thread.
128 5/12 doz. harness oil.
34,850 envelopes.

1 1/2 doz. seives.
3/12 " fire shovels.
7 3/3 " constitution bitters.
4 butcher knives.
12 1/2 " teething rings.
35 " nipple shields.
Office samples, & furniture, & safe, salesman's samples, &c.

| | |
|---|---|
| The eastern valuation of above costing us is | $24,295 21 |
| Freight | 1,084 35 |
| | 25,379 56 |
| Book accounts & outstanding claims est. | $1,000 00 |
| Assets | $26,379 56 |
| Drafts held by Traders' Bank | 2,200 00 |
| | $28,579 56 |

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

313 (6)—SCHEDULE B.—*True list of books, papers, deeds, writings, &c.*

Books. Cash ledger, cash journal.
M'd'se. " m'd'se. "
Letter-books, sales-book, collector-book.
Deeds. None.
Papers, letters, orders, miscellaneous memo.

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

(3)—SCHEDULE B.—*Choses in action.*

*a.* Debts due petitioners on open acc't est..... $3,200 00
*b.* ..... none.
*c.* Policies of insurance, 7..... 26,500 00

CHARLES HITCHCOCK,
EDWARD M. ENDICOTT,
*Petitioners.*

314 UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

On this 19 day of June, A. D. 1867, before me personally came Charles Hitchcock and Edward M. Endicott, the persons mentioned in and who subscribed to the foregoing petition and schedule, marked "B," respectively, and who, being by me first duly and severally sworn, did declare the said schedule to be a statement of all their estate, both real and personal, in accordance with the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

[SEAL.]

PHILIP A. HOYNE,
*U. S. Com'r, N. D. Ills.*

315 SCHEDULE C.—*Claims of creditors unsecured.* "C."

| | | | | |
|---|---|---|---|---|
| T. W. Lockwood .... | Troy, N. Y. ..... | 275 00 | Chicago ..... | Personal. |
| A. Kirkpatrick..... | Lansingburgh, N. Y. | 50 00 | Lansingburgh | " |
| A. Wing..... | " | 75 00 | " | " |
| C. V. W. Benton..... | " | 35 00 | " | " |
| R. C. Ackerly..... | Chicago, Ill..... | 18 00 | Chicago ..... | " |
| C. E. Wiswall..... | " | 11 00 | " | " |
| H. Dunston ..... | " | 18 00 | " | " |
| P. C. Tomson. ..... | Philadelphia ..... | 17 00 | " | Ada A. Hitchcock. |
| Taylor & Young.... | New York..... | 13 00 | " | Personal. |
| Frank & Bro..... | Baltim., Md..... | 151 00 | " | Ada A. H. |
| H. M. Crane..... | Schenectady, N. Y.. | 218 00 | " | " |
| L. A. Osborn ..... | New York..... | 91 00 | " | " |
| Phillips & Co..... | Chicago ..... | 3 00 | " | Personal. |
| Wilson & Eaton..... | Troy, N. Y..... | 31 00 | " | " |
| Nowlan..... ..... | Chicago ..... | 17 00 | " | " |
| L. Van Valkenbergh.. | Troy, N. Y., 2 judgments which have been paid but not cancelled, about ... | 500 0 | | Hitchcock & Co. |

CHARLES HITCHCOCK,
*Petitioner.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

On this 19th day of June, A. D. 1867, before me personally came Charles Hitchcock, the person mentioned in, and who subscribed to the foregoing petition and schedule, marked "C," respectively, and who, being by me first duly sworn, did declare the said schedule to be
316 a statement of all his debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

[SEAL.]

PHILIP A. HOYNE,
*U. S. Com'r, N. D. Ills.*

SCHEDULE D.

80 acres of land in Rock Island Co., Ill., back taxes..... $160 00
One lot in Ontario, Wright Co., Ia., back taxes..... 50 00

CHARLES HITCHCOCK,
*Petitioner.*

UNITED STATES OF AMERICA,
*Northern District of Illinois ss:*

On this 19th day of June personally before me came Charles Hitchcock, the person mentioned in, and who subscribed to the foregoing petition and schedule, marked "D," respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

[SEAL.] PHILIP A. HOYNE,
*U. S. Com'r, N. D. Ills.*

317 SCHEDULE E.—*Creditors whose claims are unsecured.*

| Reference to ledger. | Name. | Residence. | Am't. | When & w. contract'd. | Nature & consideration. |
|---|---|---|---|---|---|
| | Lewis Endicott..... | Boston .... | $5,000 | Chicago ..... | Promissory note. |

EDWARD M. ENDICOTT,
*Petitioner.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

On this 19th day of June, A. D. 1867, before me personally came Edward M. Endicott, the person mentioned in, and who subscribed to, the foregoing petition and schedule, marked E, respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his individual debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

[SEAL.] PHILIP A. HOYNE,
*U. S. Com'r N. D. Ills.*

318 SCHEDULE F.—*Personal property & assetts.*

None.

EDWARD M. ENDICOTT,
*Petitioner.*

UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

On this 19 day of June, A. D. 1867, before me personally came Edward M. Endicott, the person mentioned in, and who subscribed to, the foregoing petition and schedule, marked "F," respectively, and who, be-

ing by me first duly sworn, did declare the said statement to a statement of all his individual , both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

[SEAL.] PHILIP A. HOYNE,
*U. S. Com'r N. D. Ills.*

(Endorsed:) Filed June 20, 1867, at ½ past 12 o'clock p. m. W'm H. Bradley, cl'k.

And as this testimony would not otherwise appear, this certificate is signed & sealed this day of , A. D. , & made part of the record hereof.

THOMAS DRUMMOND. [SEAL.]

319 On this day, to wit, the 6th day of April, A. D. 1870, the said Traders' National Bank of Chicago, by its solicitors, filed in said clerk's office its appeal bond in said entitled cause, which said bond, with the copy of resolution of the directors of said bank thereto attached, are in the words and figures following, to wit:

*Appeal bond.*

Circuit court of the United States, northern district of Illinois.

320 GEORGE W. CAMPBELL, ASSIGNEE OF Hitchcock & Endicott,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } Appeal.

Know all men by these presents that we, the Traders' National Bank of Chicago, of the county of Cook and State of Illinois, by its president, Joseph O. Rutter, duly authorized for this purpose, as principal, and Joseph O. Rutter and Tho's P. Tallman, as sureties, are held and firmly bound unto the above-named George W. Campbell, assignee of Hitchcock & Endicott, in the sum of ten thousand dollars, ($10,000,) to be paid to him, his executors or administrators or legal representatives; to which payment, well and truly to be made, we bind ourselves, each of us, jointly and severally, and the said bank, its successors in office and assigns or legal representatives, and each of our heirs, executors, and administrators, firmly by these presents, sealed with the seal of said bank and the individual seals of the sureties, and dated this sixth day of April, A. D. 1870.

And whereas the above-named the Traders' National Bank of
321 Chicago hath prosecuted an appeal from the district court of the United States to the circuit court of the United States for the northern district of Illinois to reverse the decree rendered in the above-entitled suit by the said district court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named the Traders' National Bank of Chicago shall prosecute their said appeal to effect, and shall pay the amount of such decree and *and* all damages and costs which may be adjudged against them if they shall fail to make good their plea or defence, then this obligation shall

be void; otherwise the same shall be and remain in full force and virtue.

{TRADERS' NATIONAL BANK, CHICAGO, ILL. CORPORATE SEAL.}

Traders' National Bank of Chicago, by—
J. O. RUTTER,
*Pres.*

J. O. RUTTER. [SEAL.]
THO'S P. TALLMAN. [SEAL.]

Approved:

H. W. BLODGETT,
*First Judge.*

At a meeting of the board of directors of the Traders' National Bank of Chicago, held at their banking-house in the city of Chi-
322 cago, on the 5th day of April, A. D. 1870, it was—

*Resolved*, That Joseph O. Rutter, esq., president of said bank, be, and he is hereby, authorized and directed, as such president, to sign and execute, in the name and in behalf of said bank, a bond for the sum of ten thousand dollars ($10,000,) to George W. Campbell, assignee of Hitchcock & Endicott, as directed by the district court of the United States for the northern district of Illinois, to be given to said Campbell in the matter of the appeal from a judgment rendered by said court in favor of said Campbell, assignee, &c., against the Traders' National Bank of Chicago, and to indemnify the said Campbell, assignee, against any loss or damage or costs which may result to him, his executors, administrators, or legal representatives, in case the said bank shall fail to make good their plea or defence in the appeal of said suit.

We do hereby certify that the foregoing is a copy of a resolution duly passed as aforesaid.

{TRADERS' NATIONAL BANK, CHICAGO, ILL., CORPORATE SEAL.}

THO'S P. TALLMAN, *Cashier.*
J. O. RUTTER, *Pres.*

(Endorsed:) Filed April 6, 1870. W'm H. Bradley, cl'k.

323 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said district court in said entitled cause, wherein said George W. Campbell, assignee, &c., is complainant, and the Traders' National Bank of Chicago is defendant, as the same remains of record in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Chicago, in said district, this twenty-fifth day of April. A. D. eighteen hundred and seventy, and of our independence the ninety-fourth year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

324 Afterwards, to wit, on the seventh day of July, in the July term, A. D. 1870, of said court, in the record of the proceedings thereof, in said entitled cause is the following entry, to wit:

*Cause set for hearing in circuit court.*

GEORGE W. CAMPBELL, ASSIGNEE, &C., OF Charles Hitchcock, and Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } Appeal.

Now come the parties by their attorneys, and thereupon this cause is set down for hearing upon the record from the district court filed herein and after hearing a part of the arguments of counsel, the hour of adjournment having arrived, the further hearing is postponed until to-morrow morning.

On the next day, to wit, the 8th day of July, in the July term, A. D. 1870, of said court, in the record of the proceedings thereof, in said entitled cause is the following entry, to wit:

325 GEORGE W. CAMPBELL, ASSIGNEE, &C., of Charles Hitchcock and Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } Appeal.

Now come again the parties by their attorneys, and after hearing the concluding arguments of counsel, the court not being sufficiently advised in the premises takes time to consider.

Afterwards, to wit, on the 15th day of July, in the July term, A. D. 1870, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

GEORGE W. CAMPBELL, ASSIGNEE, &C., OF Charles Hitchcock and Edward M. Endicott, bankrupts,
*vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } Appeal.

The court having considered and being now fully advised upon the matters heretofore submitted, herein affirms the decree of the
326 district court herein, and it appears from the record that a decree was rendered in the district court on the twenty-sixth day of March, A. D. eighteen hundred and seventy, in favor of the plaintiff as assignee for the sum of seven thousand nine hundred and three dollars and twelve cents damages, together with costs.

It is thereupon ordered, adjudged, and decreed, by the court, that the defendant pay the plaintiff the said sum of seven thousand nine hundred and three dollars and twelve cents, the amount of the decree aforesaid, together with one hundred and forty-three dollars and fifty-seven cents, being the interest on said decree from the said twenty-sixth day of March, A. D. eighteen hundred and seventy, making in all the sum of eight thousand and forty-six dollars and sixty-nine cents, together with the costs herein to be taxed, and also the costs in the district court. And it is further ordered that a summary judgment be and the same is hereby accordingly entered against the Traders' National
327 Bank of Chicago, as principal, and Joseph O. Rutter and Tho's

P. Tallman, as surety, in the sum of ten thousand dollars, being the amount of the bond given on the appeal from the district court, and that the plaintiff have execution against the defendants and its sureties therefor, to be satisfied and discharged upon the marshal making thereon the amount of the said decree for damages, interest, and costs.

And thereupon the defendant prays an appeal to the Supreme Court, which is allowed, upon its giving bond in the sum of twelve thousand dollars with surety to be approved by the court.

On this day, to wit, the 25th day of July, A. D. 1870, said defendant, by his attorney, filed in said clerk's office its bond on appeal in said entitled cause, which said bond is in the words and figures following to wit:

*Appeal bond.*

Supreme Court of the United States.

GEORGE W. CAMPBELL, ASSIGNEE OF HITCHCOCK & ENDICOTT,
328 *vs.*
THE TRADERS' NATIONAL BANK OF CHICAGO. } Appeal.

Know all men by these presents that we, the Trader's National Bank of Chicago, of the county of Cook, and State of Illinois, by its president, Joseph O. Rutter, duly authorized for this purpose as principal, and Joseph O. Rutter and William F. Endicott, as sureties, are held and firmly bound unto the above-named George W. Campbell, assignee of Hitchcock & Endicott, in the sum of twelve thousand dollars, ($12,000,) to be paid to him, his executors, or administrators, or legal representatives, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and the said bank, its successors in office and assigns or legal representatives, and each of our heirs, executors, and administrators, firmly by these presents, sealed with the seal of said bank, and the individual seals of the sureties, and dated this 23d day of July, A. D. 1870.

And whereas the above-named the Trader's National Bank of
329 Chicago hath prosecuted an appeal from the circuit court of the United States to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the said circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named, the Trader's National Bank of Chicago, shall prosecute their said appeal to effect, and shall pay all damages and costs which may be adjudged against them if they shall fail to make good their plea or defense, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Fourth National Bank,

By J. O. RUTTER, *Pres.* [SEAL.]
JOSEPH O. RUTTER. [L. S.]
W'M F. ENDICOTT. [L. S.]

At a meeting of the board of directors of the Trader's National Bank

of Chicago, held at their office, in the city of Chicago, on the 23d day of July, 1870, it was

*Resolved*, That Joseph O. Rutter, esq., president of said bank,
330 be, and he is hereby, authorized and directed to sign and execute in behalf of said bank a bond for the sum of twelve thousand dollars, ($12,000,) to George W. Campbell, assignee of Hitchcock & Endicott, as directed by the circuit court of the United States for the northern district of Illinois, to be given by the said Campbell, in the matter of the appeal from a judgment rendered by said court in favor of said Campbell, assignee, &c., against the Trader's National Bank of Chicago, and to indemnify the said Campbell, assignee, against any loss or damage, or costs, which may result to him, his executors, administrators, or legal representatives, in case the said bank shall fail to make good their plea or defense in the appeal of said suit.

We do hereby certify that the foregoing is a copy of a resolution duly passed as aforesaid.

ORSON SMITH, *A. C.* [SEAL.]

Accepted:

M. W. FULLER, *Compt's Sol'r.*

Approved:

THOMAS DRUMMOND.

(Endorsed:) Filed July 25th, 1870. Wm. H. Bradley, cl'k.

331 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, complete, and correct transcript of all the record of the proceedings had in said court in said entitled cause, wherein the said George W. Campbell, assignee, &c., is plaintiff, and the said the Trader's Bank of Chicago is defendant, as the same appears of record remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this tenth day of November, A. D. eighteen hundred and seventy, and of our independence the ninety-fifth.

[SEAL.] W'M H. BRADLEY, *Clerk.*

[5 cent int. rev. stamp affixed and canceled.]

(Indorsement on cover:) No. 322. The Trader's National Bank of Chicago, appellants, vs. George W. Campbell, assignee of Charles Hitchcock and Edward M. Endicott. N. Illinois, C. C. U. S. Filed 5th December, 1870.

# II.

The Assignee should have applied to the State Court for an order on the Sheriff to pay over to him the proceeds of the Execution in his hands.

The Judgments in question were obtained in the State Courts prior to adjudication in Bankruptcy; executions were issued, levied and sale made by the Sheriff prior to any proceedings to recover the property or proceeds.

The order in the District Court purporting to restrain the Sheriff from selling was void, as it was a summary order ex-parte not authorized by law.

This was the construction placed upon the Bankrupt Act:

*Smith v. Mason Assignee of Sawyer (not yet reported). See Chicago Legal News, Vol. IV, No. 10.*

Mr. Justice Clifford in delivering the opinion of the Court, says:

"Suffice it to say, without expressing any opinion as to the weight of the evidence, "the Appellant claimed the fund as his own property, and if his claim is just and legal, "the possession of the Depositary is his possession, and if the Assignee in Bankruptcy "would divest him of the possession and control the fund, he must do it by a suit at "law or in equity."

"Strangers to a proceeding in Bankruptcy not served with process and who have not "appeared and become parties to such litigation cannot be compelled to come into court "under a rule to show cause as in this case."

The fund of $7,062.43 realized from the property of Hitchcock & Endicott was therefore *legally in the hands of the Sheriff*, and under the control of the State Court when this Bill was filed.

The testimony of the Sheriff on page 63 of the printed record shows, and the ffnal report of the Master, Record page 47, finds

that all the money realized upon the executions was still in the Sheriff's hands awaiting the order of the State Court as to distribution.

The Assignee should therefore have applied to that Court to have the fund turned over to him, and upon such appplication Hotchkiss & Sons could have been heard, and their rights authoritatively passed upon.

This has been the practice in most of the District Courts.

*In re Campbell, Am. Law. Reg. new series Vol. 7, page 100.*

McCandless, J*t*, held that the Assignee was by the Bankrupt Act subrogated to the rights of the Bankrupt and that the Act sends the Assignee to the State Court and admits its power over him.

*In re William Bunns, Am. Law Reg. N. S. Vol VII, p. 105.*

Was a case quite parallel to the one at bar, and in refusing an application of the Assignee that the District Court should interfere, the Court say:

"It was urged with great force and ability by the counsel for the Assignee that we were "bound to interfere by injunction because this was not a valid judgment. But how do "we know that? It is entered by a Court of competent jurisdiction, whose authority "it is our duty to respect. If it is fraudulent or void under the Bankrupt Law, it is "the province of the Assignee in Bankruptcy, who stands in the attitude of a defend-"ant, to see *in that forum* that no injustice is done to the general creditors."

"We must therefore refer the Assignee in Bankruptcy, as the representative of the "Defendant and of all the creditors, to the Court of Common Pleas of Jefferson "County."

The Same rule was adhered to by Mr. Justice Blatchford.

*In re Clark & Binniger, 3 Bank Reg. 123.*

In this case Clark who was partner of Binniger filed his Bill in the Superior Court of New York, for the appointment of a Receiver and the adjustment and distribution of partnership assets.

Certain Creditors thereupon filed their petition in the U. S. District Court to have Clark & Binniger declared Bankrupts, which was done, the Court holding that the appointment of a Receiver when the firm was insolvent was in fraud of the Bankrupt Act, and therefore an Act of Bankruptcy.

The Assignee then asked from the District Court an order:

1. That the U. S. Marshal be directed to take the property out of the hands of the Receiver.

2. That the Receiver and Clark be enjoined from further interfering with the property.

3. That Clark be enjoined from further prosecuting his action in the State Court.

The Court held that the Assignee was entitled to be substituted in the place of Clark *in the State Court*, and that he should be admitted to prosecute the action there in his own name, but refused to order the Marshal to take possession of the property in the Receiver's hands, or to enjoin the Receiver; holding that the Superior Court had jurisdiction over the parties and subject matter at the time the Receiver was appointed, his possession could not be disturbed by any order from the U. S. District Court.

*See Am. Law Reg. U. S. Vol. 7. pp. 309 & 310.*

Precisely the same rule was laid down by the Supreme Court of the United States in

*Peck v. Jenness, 7 How. 624.*

Mr. Justice Grier in delivering the opinion of the Court, says:

"The only question that remains to be decided is whether the rejoinder of Defendants "is a sufficient answer to the Replication. It sets up by way of avoidance of the "attachment pleaded in the Replication, that the District Court of the United States on "the petition of the assignee, and on notice to the plaintiff in this suit, had decreed

" that this attachment was not a lien on the property in the hands of the Sheriff, and " ordered him to deliver it up to the assignee or account to him for its value."

" The act of Congress of the 2d of March 1793, declares that "a writ of injunction " shall not be granted to stay proceedings in any court of a State." It follows " therefore that the District Court had no supervisory power over the State Court, " either by injunction or the more summary method pursued in this case unless it has " been conferred by the Bankrupt Act. But we cannot discover any provision in that " act which limits the jurisdiction of the State Courts or confers any power on the " Bankrupt Court to supersede their jurisdiction, to annul or anticipate their judg- " ments, or wrest property from the custody of their officers. On the contrary it pro- " vides that "all suits in law and equity then pending in which such Bankrupt is a " party may be prosecuted and defended by such assignee to its final conclusion in the " same way and to the same effect as they might have been by such Bankrupt."

" Instead of drawing the decision of the case into the Bankrupt Court the act sends " the Assignee in bankruptcy to the State Court where the suit is pending and admits " its power to decide the cause. It confers no authority on the District Court to " restrain proceedings therein by injunction or any other process, much less to take " property out of its possession or custody with a strong hand."

We submit therefore that in this case the Assignee had full authority, and it was his duty, under the Bankrupt law, to appear in the State Court and apply for an order upon the Sheriff to pay over to him the funds realized upon the Executions in his hands.

# III.

The Decree is erroneous because the proof shows conclusively that the Bank has never received from the Sheriff any amount whatever in satisfaction of the Judgment recovered by it against Hitchcock & Endicott.

The Bankrupt Act provides in substance that the Assignee may recover from any person, who has obtained the property of any Bankrupt by means of any fraudulent preference, the property so received or the value thereof.

As heretofore stated, the Sheriff still holds the funds realized from the property of Hitchcock & Endicott.

The Decree however seems to have proceeded upon the hypothesis that the money deposited by the Sheriff with the Bank was a payment to it of the amount of the Execution in its favor. This hypothesis is however entirely inconsistent with the testimony of the Sheriff, who swears that he still holds the certificate of deposit and has never applied it in satisfaction of the Judgment.

We submit therefore that there is no authority under the Bankrupt Act to warrant a decree against the Bank requiring it to pay to the Assignee the amount of a Judgment which the Bank has never realized a dime upon, be the Judgment never so void.

If it be claimed that the Decree operates to transfer the amount of the certificate from the Sheriff to the Bank, I reply that, in such case, the right of the Sheriff and of Hotchkiss & Sons, who are absent parties, would be affected by such Decree to such an extent that the Court would have no authority to make it.

If it be claimed that Hotchkiss & Sons could not be brought into court, by reason of the fact that they were non-resident, so that process

uld not be served upon them, that only demonstrates with greater rtainty the correctness of the practice we contend for.

If the Assignee had applied to the State Court for an order on the heriff to pay over to him the funds realized upon the two executions ll parties would have been in Court and bound by the order rendered, nd equal and exact justice done to each.

This was the rule laid down by the Supreme Court of Pennsylvania.

*Rohrer's Appeal 62, Penn. 498.*

This proceeding on the contrary results in great injustice and wrong o appellant.

A Decree is rendered against it for $7,903.12 as money realized rom the Bankrupt's estate when in fact it has only realized $325.20. o that in consequence of an honest misconstruction of the Bankuptcy Act, the Bank not only lose their entire claim of $6,707.43 ut some $1,800 in addition thereto. We know of no provision of the Bankrupt Act which declares any such penalty.

# IV.

The Decree rendered against the Bank was for too large an amount.

Section 20 of the Bankrupt Act provides,

"That in all cases of mutual debts or mutual credits between the parties, the account "between them shall be stated, and one debt set off against the other, but no set-off shall "be allowed of a claim in its nature not provable against the estate: provided that no "set off shall be allowed in favor of any debtor to the Bankrupt of a claim purchased "by or transfered to him after the filing of the petition."

Under the provisions of this section the account required to be stated between the Bank and the Bankrupts would be as follows:

| | |
|---|---|
| Notes held by the Bank - - | $4,500.00. |
| Advances on Drafts upon country Bank | 2,207.43. |
| | $6,707.43 |

*Contra.*

| | |
|---|---|
| Cash of Bankrupts on Deposit - | $ 325.20. |
| Cash collected on Drafts, June 12. - | 764.38. |
| " " June 30. - | 164.00. |
| | $1,253.58. |

Setting one debt off against the other the balance is $5,453.85 which would be the full amount of the claim which could have been allowed to the Bank if its officers had appeared in the Bankrupt Court for the purpose of proving their claim.

In other words, under Section 20 it was lawful for the Bank to apply in payment of their claim against Hitchcock & Endicott all of the moneys which came into its hands prior to the filing of the Petition in Bankruptcy.

The Petition was filed June 25th, 1867, the $325 was in their hands and applied May 29th, 1867, the $764.38 came into their hands and was applied June 12th.

The $165 was collected and applied June 30th, and both these last items were collections upon country Drafts on which they had made advances and had a Banker's lien.

So far therefore as the application of these sums ~~are~~ is concerned, the Bank cannot be held guilty of obtaining them in fraud of the provisions of the Bankrupt Act. They did only what the law allows and this certainly cannot be held fraudulent.

*In Winslow v. Bliss, 3 A. L. J. 71*

It was held that a party had the right to have his credit for a deposit set off against his indebtedness as indorser upon a note held by a Bank, and that if the parties before the bankruptcy do what the law allows, and the indorser thus takes up his note, it cannot be recovered from him.

*In Catlin v. Foster, 3 B. R. 134,*

It was held that when the Assignee brings an action upon a demand due the Bankrupt, the defendant may plead, set-off to more or less of such demand, although it has not been proved or presented to the Assignee.

The application therefore of the $325.20 on deposit in the Bank, to the payment of so much of the debt due from Hitchcock & Endicott to the Bank, was clearly authorized by the Bankrupt Act and not a preference contrary to the act; but the Decree orders the Bank to pay to the Assignee this very $325.20 with interest from the day of its application.

Equally erroneous was the requirement of the decree as to the payment of the $929.38 collected upon the country Drafts of Hitchcock & Endicott.

As before stated, the Bank had a lien upon all these drafts for advances and upon their collection had a lien upon their proceeds.

*Lee's Law & Practice of Bankruptcy, part 1, pp. 312 & 313*

This lien is expressly preserved by the second clause of Section 20, which is held to apply to all classes of liens,

*Davis v. Carpenter, 2 B. R., 125.*
*In re Gregg, 3 B. R., 131.*
*In re Bigelow, 1 B. R., 202.*

Section 20 in regard to set-off and the preservation of liens is substantially the same as Sections 39 and 40 of the English Bankruptcy Act, and in regard to that it has been held,

That the principle which the Bankrupt laws seem to have had in view from the earliest time is this:

"That when two persons have dealt with each other on mutual credit, and one of them "becomes a Bankrupt, the account shall be settled between them, and the balance only "payable on either side."

*Gibson v. Bell, 1 Bing. N. C. 753.*
*Boyd v. Mangles, 16 M. & W. 337.*
*Lee's Bankruptcy, Part 1. 280---282.*
*Bump's Bankruptcy, p. 97.*
*In Murray v. Riggs, 15 John. 571,*

It was held that when there were mutual dealings between A. and B and A having funds of B in his hands, B becomes bankrupt, A is entitled to set off his debts or demands against the funds in his hands, and can be compelled to account to the Assignee for the balance only, even though the subject of set-off would not be admissable at law.

See also

*Tuckers v. Oxley, 5, Cranch. 34.*
*Groom v. West, 8 Ad. & E. 758.*
*Abbott v. Hicks, 5 Bing. N. C. 578.*
*Garry v. Sharratt, 10 B. & C. 716.*

A creditor holding a lien is entitled to apply it in discharge of whatever liability of the Bankrupt he may elect, unless a contract or

a course of dealing between the parties regulate the application of the proceeds in a particular mannner.

*Ex-parte, Johnson, 3 De Gex, Mac. & G. 218, 6 Ves. 94.*

The Bank therefore under the 20th section had a right to apply the $964 collected on country Drafts upon which they had a lien to the discharge of so much of the indebtedness of Hitchcock & Endicot to it.

They also had a right to apply the balance due from them to Hitchcock & Endicott on deposit account in the same way.

Whatever therefore has been obtained by the Bank, by virtue of the application of these amounts, was not obtained by means of a fraudulent preference.

The entry of the Judgment, which has been declared void, and the levy of the execution gave the Bank no greater right to these funds than it had by the express provisions of the Bankrupt Act, and therefore did not operate as a preference.

The 35th and 39th Sections of the Bankrupt Act only authorize the Assignee to recover back money or other property paid, transferred contrary to the Act.

The deposit account of $325.20 and the $924 collected on Drafts was set off and applied under and in express accordance with the provisions of Section 20, and therefore are not recoverable by the Assignee.

If it were true then that the whole amount of the Judgment in favor of the Bank had been paid, the Decree would be too great by $1,259.40 and interest from the 29th of May to the date of the Decree.

We submit therefore that the Decree should be reversed and the cause remanded.

We do this the more confidently because it is admitted by the learned counsel for Appellee that no actual fraud was intended by Appellant, and the Court below was of the same opinion, and expressed

it as follows :

" I do not suppose that the President of the Bank was guilty of or intended to com-
" mit any fraud in fact. His Bank had loaned Hitchcock & Endicott a very considera-
" ble sum of money ; he had become alarmed at their condition, and desired to put an
" end to all business transactions between them and the Bank, and naturally wished to
" obtain his debt or security for it as soon as possible."

Under the circumstances we have the right to insist that no greater penalty shall result from their action than the Bankrupt Act fairly warrants, and that they shall not be required to pay back to the Assignee the amount of the set-off which the Act itself authorized them to apply.

GEO. C. CAMPBELL, Solicitor for Appellant.

UNITED STATES SUPREME COURT.

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# THE TRADERS' NATIONAL BANK OF CHICAGO,

*Appellant,*

*VS*

# GEORGE W. CAMPBELL, Assignee of Hitchcock & Endicott, Bankrupts,

*Appellee.*

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APPEAL FROM UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

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## *BRIEF FOR APPELLANT.*

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GEO. C. CAMPBELL,

*Solicitor for Appellant.*

Rand, Brewster & Co., Printers, Chicago.

# UNITED STATES SUPREME COURT.

THE TRADERS' NATIONAL BANK
OF CHICAGO, Appellant.
vs
GEORGE W. CAMPBELL,
ASSIGNEE OF HITCHCOCK &
ENDICOTT, BANKRUPTS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

## BRIEF FOR APPELLANT.

*May it please the Court:*

We do not propose to enter into any discussion of the facts in this case or ask any review of the finding of the District Circuit Court thereon: but as the points of law we desire to make, depend upon a full understanding of certain leading and undisputed facts, we ask your Honors' attention to the following,

### STATEMENT OF FACTS:

Hitchcock & Endicott were traders in the City of Chicago, with a stock of about $30,000 in value, and from November 1866 to May 29th, 1867, kept their bank account with the *Traders National Bank*, and were by it accommodated with loans, secured by the notes of the firm: and with advances upon the country drafts of the firm.

When the account was first opened, *Endicott* stated to the President of the Bank that the firm had $9,500 capital put in by him, and $5,000 put in by Hitchcock, and were in a solvent and prosperous condition.

On the 6th of May, J. O. Rutter, President of the the Bank, requested from Hitchcock a written statement of the affairs of the firm, and received one, signed by the bookkeeper of the firm.

This statement showed the

| | |
|---|---|
| Assets, - - - - | $41,777.16. |
| Liabilities, - - - - | 29,198.00. |
| Net Capital. - - - | 12,579.16. |

Prior to the rendition of this statement the Bank held the notes of Hitchcock & Endicott for loans as follows:

Note dated March 20th, due June 19th, 1867, $1,000.
" April 8th. " 10th. " 1,500.

After the receipt of the statement further loans were made, and notes taken as follows:

One May 8th, due May 26th, 1867, $ 500.
One May 20th, due July 22d, 1867, 1,500,

Making a total of $4,500, money actually loaned in the ordinary course of business, for which the notes of Hitchcock & Endicott were taken, each accompanied by warrant of Attorney to confess judgment thereon.

In addition to the foregoing, the Bank had advanced to Hitchcock & Endicott $2,207.43, upon country drafts deposited with it for collection, for which it had a *Banker's Lien* upon the Drafts.

On the 20th of May, while Endicott was at the East, Hitchcock received a letter from his bookkeeper, who had run away, stating that he had made a mistake of $10,000 in favor of the firm, in making the statement rendered to the Traders Bank, a copy of which was enclosed with a memorandum attached, showing an error in footing whereby the liabilities of the firm were made to appear $10,000 less than they were in fact.

*Printed Record pp 58 and 59.*

On the 24th of May, J. D. Rutter, the President of the Bank, learned that the bookkeeper of Hitchcock & Endicott had absconded, and that the statement rendered to him was incorrect. Rutter conceived that a fraud had been practiced upon the Bank, and immediately sent for Hitchcock, charged him with being a party to it, and demanded an immediate return of the money obtained thereby. This was refused and on the 27th of May Endicott returned to Chicago.

On the 28th of May, suit was brought by the Bank against Hitchcock & Endicott, and on an affidavit of Rutter charging Hitchcock with fraud, a capias was issued for his arrest.

The capias was placed in the hands of an officer to execute. Hitchcock evaded the officer for a time, but was finally found, and during the evening Hitchcock and Endicott, to avoid the arrest, executed and delivered to the Bank a demand note, with warrant of Attorney to confess judgment, for the whole amount of their indebtedness, *i. e.* $6,707.43.

On the 29th of May the Bank applied upon the note in payment of so much thereof $325.20 which Hitchcock & Endicott then had on deposit, and caused a judgment to be immediately entered for the balance and $50 Attorneys fees as authorized by the warrant of Attorney. Execution was immediately issued for the amount of judgment $6,432.23 and costs of suit, and levied upon the stock of goods of Hitchcock & Endicott.

On the 30th day of May another judgment was rendered against Hitchcock & Endicott upon a note and warrant of Attorney, executed by them to *Hotchkiss & Sons,* March 5th, 1867.

This judgment was for $1,340 and costs. Execution was issued the same day and levied upon the same stock of goods. The goods were then advertised for sale by the Sheriff upon both executions.

On the 12th of June the Bank collected upon some of the country Drafts of Hitchcock & Endicott in its hands $764.38, and this was levied upon by the Sheriff.

On the 25th day of June a Petition was filed in the U. S. District Court by Doane & Co., creditors of Hitchcock & Endicott, praying that they be declared Bankrupt.

On the 26th of June the District Court entered an order upon the Petition of Doane & Co., that the Sheriff should refrain from selling the goods levied upon by him. Neither the Sheriff, the Traders Bank nor Hotchkiss & Sons were parties to this proceeding.

On the first day of July the Bank collected $165 upon other of the country Drafts of Hitchcock & Endicott, and this was levied upon by the Sheriff.

On the 10th of July Hitchcock & Endicott were adjudged Bankrupt, and the Marshall as messenger demanded of the Sheriff all the property of Hitchcock & Endicott which he had levied upon as aforesaid, this the Sheriff refused to turn over.

In August, 1867, the Sheriff sold the Stock of Goods upon the two Executions for $7,812.05, which, with the money levied upon by him made a total of $8,741.43. The costs paid by the Sheriff were $1,679, leaving in his hands a net balance of $7,062.43.

*This amount is still in the hands of the Sheriff.* For $6,500 of it he holds a certificate of deposit of the Traders Bank, and the balance in cash.

*See Printed Record p. 63.*

On the 21st of November, 1868, Geo. W. Campbell, the assignee in Bankruptcy, filed his Bill in Chancery, in the District Court against the Traders Bank and Hotchkiss & Sons, alledging that the defendants had each obtained from Hitchcock & Endicott fraudulent preferences, and that the several judgments in their favor were void. The Bill prayed that the judgments be set aside and that the defendants be ordered to pay over to the assignee the value of the goods sold under the two executions.

Pleadings were made up, evidence taken, and on the 4th of January, 1870, *the Bill was dismissed as to Hotchkiss & Sons*, and a Decree entered finding as follows:

1. That Hitchcock & Endicott were insolvent on the 28th day of May, 1867.

2. That the Traders Bank had reason to suspect and believe the fact of such insolvency.

3. That such being the facts, Hitchcock & Endicott gave to the Bank the note and warrant of Attorney in question.

4. That on the 29th of May the Bank appropriated as part payment of this note $325.20 then on deposit to the credit of Hitchcock & Endicott.

5. That the Bank caused judgment to be entered, upon the same day, for the balance of the note, execution to be issued thereon and levy made upon the goods of Hitchcock & Endicott, and also upon $929.38, cash collected by the Bank for Hitchcock & Endicott.

6. That the Goods were sold on this execution and that in favor of Hotchkiss & Sons, and that out of the proceeds of sale and the moneys levied upon, *the full amount of the Judgment and costs were paid to the Bank by the Sheriff*.

7. That the payment of $325.20 upon the note was void, and that judgment in favor of the Bank was void as fraudulent preferences.

8. The Decree then ordered that the Assignee recover from the Bank the $325.20 and interest from May 29th, 1867, also an amount equal to the Judgment and costs rendered in favor of the Bank with interest from May 29th, 1867, amounting in all to $7,903.12.

# I.

We submit that upon the facts in the case the Decree is clearly erroneous for the following reasons:

*First*, because the proper parties were not before the Court.

*In Shields v. Barrow 17 How. 141,*

Mr. Justice Curtiss in delivering the opinion of the Court, says:

"The Court can make no Decree affecting the rights of any Absent person, and can "make no Decree between the parties before it, which so far involves or depends upon "the rights of an absent person that complete and substantial justice cannot be done "between the parties to the Suit without affecting those rights."

To the same effect are

*M. S. & N. I. RR v. M. C. R. 15 How. 233.*
*Commerce v. Roberts 3 Wheat. 591.*
*Coiron v. Millandon 19 How. 113.*
*Mallow v. Hinde 12 Wh. 194.*
*Barney v. Baltimore 6 Wall. 280.*
*Hoe v. Wilson, 9 Wall., 501.*

Under the foregoing rule Hotchkiss & Sons were necessary parties in this case upon the facts appearing in evidence.

It will be remembered that the goods and funds of the Bankrupts had before Bankruptcy been levied upon and sold by the Sheriff under *two Executions*, one in favor of the Appellants and the other in favor of Hotchkiss & Sons.

Upon the hearing the Bill was voluntarily dismissed as to Hotchkiss & Sons, and then Decree rendered that the judgment in favor of the Bank was void, and that it pay over to the Assignee in Bankruptcy $6,500 of the proceeds of the Executions with interest from May

29th, 1867 This $6,500 was still in the honds of the Sheriff, that is, he held a certificate of Deposit of the Bank for that amount of the proceeds of sale ; the balance $562.43 he still held in cash.

The Judgment in favor of Hotchkiss & Sons now amounts to over $1,800 and has never been declared void, but is still in full force and virtue, and when the Judgment in favor of the Bank was declared void, became the first lien upon the funds in the Sheriff's hands realized from the property of the Bankrupts, and was and is entitled to be paid in full out of those funds.

We submit that no reason can be assigned why Hotchkiss & Sons cannot at any moment obtain from the State Court an order upon the Sheriff to pay their Judgment in full, and the Sheriff could not successfully resist such rule by pleadiug the Decree in this case, for the simple reason that Hotchkiss & Sons are not parties to the Bill.

If the Decree in this case, operates to transfer to the Assignee in Bankruptcy the $6,500 deposited by the Sheriff with the Bank, leaving in his hands only $562.43 with which to satisfy the Judgment of Hotchkiss & Sons now amounting to over $1,800, it certainly affects the rights of these absent parties.

If the Sheriff can plead this Decree in answer to a rule in the State Court to pay over the money, Hotchkiss & Sons are relieved of some $1,300 by Decree in a case to which they are not a party.

If the Sheriff cannot plead the Decree in answer to such rule he is left liable to Hotchkiss & Sons in that amount and that by the operation of a Decree in a case to which he was not a party.

We submit that the case is clearly within the rule as to absent parties and that the Decree should be reversed.

If it should be objected that the objection is now made for the first time we reply that the cause was dismissed as to Hotchkiss & Sons upon the hearing, and therefore could not be made before, and that this Court will reverse and remand a cause defective for want of necessary parties though the point were not made below.

*Hoe v. Wilson 9 Wall. 501.*

# UNITED STATES SUPREME COURT.

THE TRADERS' NATIONAL BANK OF CHICAGO,
*Appellant,*

vs.

GEORGE W. CAMPBELL, Assignee of HITCHCOCK & ENDICOTT, Bankrupts,
*Appellee.*

APPEAL FROM UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

## BRIEF FOR APPELLEE,

AND

## OPINION OF JUDGE DRUMMOND.

MELVILLE W. FULLER, *Appellee's Solicitor.*

C. W. Dunkley & Co., Printers, 73 W. Lake St.

James H. Roberts
Of Counsel

# UNITED STATES SUPREME COURT.

THE TRADERS' NATIONAL BANK OF CHICAGO,
*Appellant,*

vs.

GEORGE W. CAMPBELL, Assignee of HITCHCOCK & ENDICOTT, Bankrupts,
*Appellee.*

APPEAL FROM UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

## *BRIEF FOR APPELLEE.*

*May it Please your Honors:*

The determination of this case depends upon a few facts of great simplicity, which ascertained, the application of the law is free from difficulty.

### *STATEMENT OF FACTS.*

Hitchcock & Endicott, in May, 1867, had been and were engaged in the business of selling Yankee notions, brushes, etc. More or less for three months prior to May 28, the firm had been entirely unable to meet its payments, and early in May had become hopelessly insolvent. Notes had matured, and were not

paid; drafts had been protested; accounts were overdue; suits had been commenced. (Printed Rec., p. 57.) Scarcely a conceivable feature of inability to pay was lacking; and on the 28th of May their nominal assets were in the vicinity of $28,000, while their liabilities were $33,000 to $34,000. (Rec. 54.) In January, 1867, a statement of the condition of the firm had been made to the Traders' National Bank, which showed the possession of assets above liabilities to the amount of $12,000. About the 20th day of May, the book-keeper discovered that he had committed an error of $10,000 in favor of the firm, and that the estimated assets exceeded the liabilities but $2,000 instead of $12,000, as supposed; and after communicating this fact to his employer, he left town.

Hitchcock & Endicott had been for some months doing business with the Traders' National Bank, whose officers were fully acquainted with the foregoing facts, and had repeatedly extended Hitchcock & Endicott's paper.

On the 28th day of May, 1867, the bank held Hitchcock & Endicott's notes as follows: One dated March 20, 1867, for $1,000, due June 19, 1867; one dated April 8, 1867, for $1,500, due June 10, 1867; one dated May 8, due May 26, 1867, for $500; one dated May 20, 1867, for $1,500, due July 22, 1867; and it also held drafts of Hitchcock & Endicott on their country customers for $2,207, of which $1,700 were taken between May 13 to May 29, and the balance prior to May 13, and of which $943.23 was subsequently paid. (Printed Rec. p. 83.)

On that day, the bank commenced suit against Hitchcock & Endicott in the Circuit Court of Cook County, issuing a summons to Endicott and a capias for the arrest of Hitchcock.

During the day, Hitchcock evaded service, but was found about 9 o'clock in the evening at his own house, and there signed the warrant of attorney authorizing confession of judgment in favor of the bank upon a note thereto prefixed for $6,707.43, payable on demand. This note had been executed in the firm name by Endicott, who had also signed the warrant of attorney. The amount included all the paper held by the bank, of which but $500 was *then* due. The President of the bank admits that this was done under the idea that a judgment obtained by *pressure* of this character would be taken out of the operation of the Bankrupt Law.

At this time Hitchcock & Endicott had to their credit in the bank the sum of $325.20, for which Endicott gave the check of the firm, and that sum was endorsed on the note on the morning of the 29th of May, 1867. This done, the bank entered up judgment against Hitchcock & Endicott for $6,432.23 and costs, and execution was thereupon issued, and levied on their stock of goods.

On the 30th of May, judgment was rendered by confession in favor of Hotchkiss' Sons, and against Hitchcock & Endicott, for $1,379 and costs, and execution was issued and delivered to the Sheriff.

In the meantime, various writs of attachment and distress warrants had also been issued against Hitchcock and Endicott, and levied on the goods in question.

June 25, 1867, petition was filed against Hitchcock & Endicott in the United States District Court to cause them to be declared bankrupt, and they were so adjudicated July 10, and a warrant issued to the Marshal, to take possession of the property which the Sheriff refused to deliver up.

Aug. 26, Campbell, (appellee) qualified as assignee, having been thereto duly appointed Aug. 21, 1867.

An order restraining the Sheriff from proceeding upon his levy was granted by the United States Court, June 25, which was disregarded by that officer, who, subsequently, and in August, sold the property in question.

The money realized, together with certain moneys collected upon Hitchcock & Endicott's country drafts and turned out by the Bank to the Sheriff upon its own execution made up the amount of the judgment, and this money was all placed in the hands of the Bank, by the Sheriff.

The United States Marshal demanded the property upon the warrant, but the Sheriff refused to surrrender the same, and Mr. Campbell, the assignee, made similar demand with like result immediately upon his appointment and qualifying.

Nov. 21, 1867, Campbell filed his bill in Chancery against the Bank and Hotchkiss' Sons, setting up the facts, charging both judgments to be void, and praying for a decree for the value of the property.

On hearing before Drummond, District Judge, the bill was dismissed as to Hotchkiss' Sons, a non-resident corporation, and decree rendered for the amount of money received by the Bank, which was the amount of their note, with interest added.

An appeal was taken to the Circuit Court and argued before Mr. Justice Davis, by whom the decree below was affirmed, and from that judgment this appeal is prosecuted.

The opinion of the learned Judge of the District Court is attached hereto.

I.

This case is brought under the 35th and 39th sections of the Bankrupt Act.

These sections must be construed together.

All the qualifications and conditions prescribed by section 35 not inconsistent with the provisions of section 39, will apply to proceedings under the latter section; and all the qualifications, conditions and prohibitions of section 39, so far as they relate to the same class of matters provided for by section 35, and are not inconsistent with its provisions, will apply to proceedings under section 35.

*In re Black and Secor*, 2 Benedict, 196.
Potter's Dwarris on Statutes, 189.

II.

Under the first clause of section 35, if any person being insolvent or in contemplation of insolvency, within four months before the filing of a petition by or against him, with a view to give a preference to any creditor having a claim against him procures his property to be seized or makes any payment, transfer, etc., thereof, *directly* or *indirectly*, the person receiving such payment, transfer, etc., having reasonable cause to believe the debtor to be insolvent and that the payment, conveyance, etc., is in fraud of the act, the same shall be void, and the assignee may recover the property or its value.

1. Were Hitchcock & Endicott insolvent on the 28th day of May, 1867?

Insolvency, as the term is used in the Bankrupt Act, does not mean an absolute inability to pay one's debts at a future time, upon a settlement and winding up of all a trader's con-

cerns; but it exists when the trader is not in a condition to pay his debts *in the ordinary course of business;* as persons carrying on trade usually do.

*Thompson* v. *Thompson*, 4 Cush., 134.
*Lee* v. *Kilburn*, 3 Gray, 600.
*Cowen, J.*, 4 Hill, 650.
*Buckingham* v. *McLean*, 13 Howard, 167.
*Bailey* v. *Schofield*, 1 M. & S., 338.
Bump on Bankruptcy (4th Ed.), 448.
Cases cited in notes.

Tested by this definition, Hitchcock & Endicott were hopelessly insolvent.

They had been unable to meet their commercial paper and make their payments in the ordinary way for months, to say nothing of the other almost innumerable elements of a failure in business, all of which existed.

The President of the bank and Hitchcock & Endicott argue in their evidence that the law is not as stated, and that there is no insolvency in any case where the supposed assets equal the liabilities.

If this were the law, as it is not, still Hitchcock & Endicott were insolvent, as their liabilities far exceeded their assets as they were bound to know, and as the bank had reasonable cause to believe.

2. Did Hitchcock & Endicott make any payment or transfer within four months of the filing of the petition?

The petition was filed June 25, 1867; the judgment note was given May 28th, and the $325.20 was paid thereon May 29th, 1867, and judgment was entered up and execution levied on the same day.

The act of suffering a creditor to take the property of the debtor, upon legal process, is a *transfer* of the property within the meaning of the 35th section.

*In re Black & Secor*, 2 Benedict, 196.
Bump's Bankruptcy, p. 454.

3. Were such payment and transfer with a view to give a preference ?

Every one is presumed to intend what is the necessary and unavoidable consequence of his acts.

*Beals* v. *Gray*, 13 Gray, 18.
*Denny* v. *Dana*, 2 Cushing, 160.
Bump on Bankruptcy, 451, and cases cited.

See the opinion of Judge Drummond in this case.

And this presumption is conclusive.

*Cunningham* v. *Freeborn*, 11 Wendell, 240.
*Waterbury* v. *Sturtevant*, 18 *Wend.*, 353.
*Barney* v. *Griffin*, 2 Comstock, 365.

The conclusion is one of law, and belongs to the class of presumptions held to be irrebutable.

The facts upon which the presumption arises may be disputed, but when once ascertained, the conclusion follows.

*In re Black & Secor*, 2 Benedict, 196.
*Hardy* v. *Binninger*, 7 Blatchf., 262.
*Bump on Bankruptcy*, 493, and cases.

And were this not so, the presumption is strengthened rather than weakened, by the testimony in this case.

4. Had the Traders' National Bank reasonable cause to believe Hitchcock & Endicott insolvent, and that the payment and transfer were in fraud of the Bankrupt Law ?

The *actual* belief is immaterial,—the question is as to the existence of reasonable ground for belief.

*Coburn* v. *Proctor*, 15 Gray, 38.
*Scammon* v. *Cole*, 3 B. Reg., 100.
*Beals* v. *Quinn*, 101 Mass., 262.

The evidence discloses not only reasonable cause, but actual knowledge.

The bank knew Hitchcock & Endicott's paper was overdue and unpaid; it believed their business had been managed with great negligence and incompetency; it had been extending their paper for months; it knew another judgment note of $1,300 was outstanding; that a suit had been commenced against them; that the book-keeper had run away; that the assets were $10,000 less than represented by the January statement; that Hitchcock evaded service of process, itself an act of bankruptcy, etc. This knowledge is adequately shown by the cross-examination of the President, pp. 83 to 98 of the printed record, and in his affidavit, p. 30, printed record, made before the note was given. Having such knowledge of insolvency, the bank also knew that the proceedings were in fraud of the act.

More than this, it stands admitted by the President that they were had, and taken with *express reference* to that act, and in the effort to avoid its operation, in itself a fraudulent attempt. On page 91, printed record, he testifies:

Cross-Int. 79. Had you read the Bankrupt Law, so called, on or before the 28th of May, 1867?

Ans. I had.

Cross-Int. 80. Had you discussed it with your counsel?

Ans. I had.

Cross-Int. 81. Had you, before the capias was issued against Hitchcock, come to the conclusion in your own mind, or were you of the opinion after taking legal advice, that a judgment

note given the bank *under pressure of legal process*, or the importunity of the creditor, or the judgment on a note so given would be taken out of the operation of the Bankrupt Law?

Ans. I was of the opinion, after reading the Bankrupt Law, with the annotations of the editor and compiler on the subject, and upon the advice and judgment of those learned in the law, that a judgment note obtained and executed in the manner described in the interrogatory, would avoid all conflict with the operation of the so-called Bankrupt Law.

Under such circumstances, can a doubt be entertained of the invalidity of the payment and judgment, and of the complainant's right to recover?

It is said, however, that the act of the debtor must be *voluntary*, and that in this instance Hitchcock & Endicott were coerced into giving the note.

To this I answer: *First*: This would be no defence if it were true. It does not lie in the mouth of this creditor, which designedly sought by the alleged "pressure" of a capias to render Hitchcock's action in signing the note and warrant of attorney involuntary, so as to take the transaction, as the creditor thought, outside of the operations of the Bankrupt law, to urge such a defence; to permit it would be to allow an actual fraud upon the act to serve as a *protection* against its provisions in favor of the party perpetrating the fraud.

It is proper in this connection for the Court to note that Endicott seems to have signed the papers without substantial objection, perhaps because his brother was a director of the Bank.

The Court will observe also that the grounds alleged in the affidavit for the capias (to be found on page 30 of the printed record) were actually insufficient to justify its issuance, and that none of the paper, which went to make up the judgment note

for $6,700, was due, except one note for $500, (See answer of the President to cross-interrogatory 6, page 83, printed record) The execution of this note would have been held a fraud upon creditors if no bankrupt law had been in existence.

Under the bankrupt law of 1841, it is true that the act of the debtor should be of an affirmative voluntary character, but this was so held only in cases where the pressure or importunity to which the debtor yielded, was honestly applied by the creditor in the exercise of the usual means and under the operation of the natural anxiety to collect a debt due. It could never have been extended to protect proceedings initiated with the express purpose of evading the law itself.

True, the Bank desired to secure itself, but *its intent in the mode pursued* was to avoid the provisions of the Bankrupt act, and this *per se* vitiated its entire proceedings.

*Second:* It is not disputed that the payment was voluntarily made, and it does not appear that the note was given otherwise than voluntarily. It was at least not under duress.

*Third:* The provisions of the 39th section to be hereafter considered, differing from the law of 1841, place the suffering his property to be taken on legal process by the debtor, which is the occupation of a mere passive condition on his part, in the same category with the pursuit of an active course.

## III.

The 39th section provides that if any person being insolvent or in contemplation thereof should make any payment or transfer of money or property, or give any warrant to confess judgment, or procure *or suffer his property to be taken on legal process, with intent to give a preference or* to defeat or delay

the operation of the act, the money or property might be recovered back if the person receiving the payment or conveyance had reasonable cause to believe that a fraud on the act was intended and that the debtor was insolvent.

We have already seen that Hitchcock & Endicott were insolvent, and that the bank had reasonable cause to believe it; and that, as what was done, could have no other result than to give a preference and defeat and delay the operation of the act, the intent to do this must necessarily be presumed to have existed, to the knowledge of the Bank which participated in the transaction and received the fruits thereof; and we have adverted to the fact that the confession of judgment operated as a "transfer" within the meaning of the act.

This would be sufficient to sustain the decree since, as we have said, the excuse that the judgment was obtained by "pressure," and therefore the debtor's act lacked that affirmative voluntary character which, under the Bankrupt Law of 1841, was deemed essential to rendering it in fraud of the law, will not avail a party who deliberately, as this appellant did, sought *to evade* the law's operation.

But it is unnecessary to discuss this, as the provision of the 39th section, that if the debtor "*suffers* his property to be taken on legal process, etc.," completely disposes of this defence if it were otherwise well founded.

When a person permits what he can prevent, he suffers or allows the thing to be done, whether he is threatened or pressed or not.

*In re Black & Secor*, 2 Benedict, 196.

*In re Craft*, 6 Blatchf., 177.

There certainly appears no reason to deny that Hitchcock & Endicott clearly suffered their property to be taken on legal

process. It was their own voluntary act in executing the warrant of attorney, which gave the bank the means of obtaining the judgment and taking the property on execution. That they need not have pursued this course is obvious, and that it was their duty to await the 1st of June and then file their petition in bankruptcy is equally so. If this provision of the Bankrupt Law is to have any operative effect at all, it should be applied in the case at bar.

See Judge Drummond's opinion *post.*

All that has been said in reference to the intent to prefer, reasonable cause to believe, etc., is applicable here and need not be repeated.

IV.

In *Shawhan* v. *Wheritt*, 7 Howard, 627, it is ruled that "a lien acquired by a decree of a State court in a suit instituted *after notice* of an act of bankruptcy, committed by a merchant, is invalid; and the party who has received property of the bankrupt or its procceds, under such a decree, must account to the assignee therefor." The Court say: "The policy and aim of bankrupt laws are to compel an equal distribution of the assets of the bankrupt among all his creditors. Hence, when a merchant or trader, by any of these tests of insolvency, has shown his inability to meet his engagements, one creditor cannot by collusion with him, *or by a race of diligence*, obtain a preference to the injury of others. Such conduct is considered a fraud on the act, whose aim is to divide the assets equally and therefore equitably."

That decision was rendered under the Act of 1841, and is *a fortiori* applicable under that of 1867.

Payments, transfers, etc., etc., were held void under the

former law, when made by a bankrupt or one having bankruptcy in contemplation. Under the latter, all such transactions are avoided, not only when the debtor is bankrupt, etc., but when he is insolvent, or is acting in contemplation thereof.

If, then, the case at bar was one simply of a race of diligence, the bank could not hold the property and the decree should be affirmed.

The policy and aim of bankrupt laws, as stated, alone render them palatable to a large portion of community, and could not be carried out if proceedings like those in this case, are permitted to sweep away the debtor's entire property for the benefit of a single creditor cognizant, and the one of all the creditors most cognizant, of all the facts.

This case does not involve the more difficult question whether, where a judgment note is given and received in good faith, when the debtor is solvent, a judgment by confession thereon *after* insolvency has supervened to the knowledge of the holder, is void for that reason, for here the insolvency existed, and was known to the bank *before the execution of the note*, and was the *moving cause* of obtaining it.

In such case the law is beyond reasonable doubt.

## V.

A plea to the jurisdiction was filed to the bill in this case, to which a demurrer was sustained, and the appellant thereupon answering renewed the alleged objection.

It seems to have been supposed that the question as to the right of the United States District Court sitting in bankruptcy to interfere with proceedings in State courts was in some way involved in this record. This is an entire mistake.

The judgment remained undisturbed, and the Sheriff proceeded with his writ of *fieri facias* in defiance, it is true, of the order of the District Court upon the original petition, but that is a matter not in issue here. This is simply a bill for the recovery of the value of certain money and property obtained by appellant under circumstances which gave the assignee in bankruptcy the right to such recovery. No jurisdictional question whatever arises.

No objection was raised because the remedy was sought in equity. Nor could any objection be successfully urged. The case was one calling for the exercise of equity jurisdiction on the ground of fraud, and also because the situation of the two judgments was such that the proper adjustment in case of recovery of the entire value could be arrived at in no other way; and even upon the view of the court that the measure of damages, so far as the bank was concerned, might be properly fixed at the face of the judgment with interest, and the amount of the payment and interest, an accounting became necessary, and was, in fact, resorted to.

But, under the first and second sections, the Bankruptcy Court had jurisdiction in equity in any aspect, and irrespective of any specific ground for equity interposition.

This has been uniformly held in the District Courts, and is obvious on the face of the act itself.

Thus in *Bradshaw* v *Klein*, 7 *American Law Register* 505, a bill was sustained to recover property, conveyed by the bankrupt in fraud of creditors and in *Wilson* v *Bridgman*, 2 *Bank R, 147, S. C, 1 C. Leg. News 193*, to recover money obtained upon a judgment given contrary to the bankrupt act.

And in Bump's work on bankruptcy, (4th. Ed,) p. 281, a

multitude of cases is referred to to sustain the proposition thta the District Court has full and adequate jurisdiction over all matters relating to the settlement of the bankrupt estate, either at law or in equity, by way of petition or bill.

Indeed, this would ordinarily be so, as no ground ot equity jurisdiction is more familiar than that based upon allegations of fraud, in reference to which the jurisdiction of courts of equity is firmly established whether the fraud in question be provided against by statute or not. With the exception of wills, courts of equity may be said to possess a general, and perhaps a universal concurrent jurisdiction with Courts of law, over frauds cognizable in the latter, and exclusive jurisdiction in cases of fraud beyond the reach of the Courts of law.

This question does not, however, arise here as no objection to the jurisdiction on this ground was indicated by plea, answer or in any other way in the Court below, and it is well settled that such an objection can not be raised for the first time in the appellate Court.

VI.

The decree of the Court below was eminently fair to the defendant's Bank.

Hotckiss' Sons being non-residents and no service of process had upon them, the bill was dismissed as to them.

As to the Bank, the Court held the payment of May 29, and the judgment note and judgment void as in contravention of the bankrupt law, and as the Bank had received the amount of its judgment out of the proceeds of the sale, it was decreed that the complainant recover the amount of the payment and an amount equal to the face of the judgment and interest, and a

reference was had to the Master upon whose report, the final decree was entered.

(Printed record, pp. 46, 47, and 48,) Thus instead of decreeing the value of the goods, the Court simply ordered the Bank to return what it had itself received in money, leaving nothing to be complained of if the Court's view of the law and its application was correct

VII.

This brief is drawn under circumstances of embarrassment arising from the recent conflagration, and in the absence of any argument upon the other side.

It is believed, however, that it indicates substantially the material points in the case and the opinion subjoined practically renders further or perhaps any argument unnecessary.

MELVILLE W. FULLER.

*Appellee's Solicitor.*

James H. Roberts

of counsel

*OPINION OF THE COURT BY DRUMMOND, J.*

This case has been very fully and ably argued by the counsel on both sides, and the questions involved are not entirely free from difficulty.

The controversy grows out of the business transactions of Hitchcock & Endicott, of Chicago, commencing in the fall of 1866, and terminating about the latter part of May, 1867.

In the fall of 1866, this firm commenced doing their banking business with the Traders' Bank of this city; making deposits, drawing checks, borrowing money, etc.—all the usual business which such a firm as Hitchcock & Endicott would have with banks. In the spring of 1867 there would seem to have been some trouble in the affairs of Hitchcock & Endicott, as early as the beginning of March. At any rate, on the 5th of March, 1867, a note and warrant of attorney authorizing a confession of judgment was given by them to Hotchkiss' Sons, defendants in this case, for a debt of over $1,300.

The principal transactions which are the subject of inquiry here occurred during the month of May, 1867. At that time the President of the Traders' Bank thought it material to inquire into the standing and pecuniary position and resources of Hitchcock & Endicott, it would seem, partly to satisfy himself as the President of the bank, and partly with a view of properly answering inquiries that were made as to their condition. About the 10th or 12th of May, in reply to a request made by the President of the bank to Hitchcock & Endicott, a statement was furnished purporting to set forth the condition of the house—

their assets, resources, and liabilities—which showed a balance in their favor of something over twelve thousand dollars. This statement seems to have been, to some extent at least, satisfactory to the President of the bank, and the business went on in the usual way.

During this time there had been very considerable loans made by the bank to Hitchcock & Endicott, and on the 28th of May that loan altogether amounted to several thousand dollars. On the 24th of May, however, the President of the bank had received some information which induced him to believe that the statement which had been previously furnished was untrue. It appears that the book-keeper of the firm had run away. Before going he had written a letter to Mr. Hitchcock saying that in the statement already referred to, showing the assets and liabilities of the firm, there had been a mistake made of ten thousand dollars; that is to say, that their liabilities were ten thousand dollars more than they were represented to be. Upon learning this fact, the President of the bank, as he says, became somewhat alarmed as to the condition of the account between the bank and Hitchcock & Endicott, as well as indignant that a false statement had been presented to him with a view of deceiving him. Thereupon he took immediate measures to secure the indebtedness due from Hitchcock & Endicott to the bank. It is to be observed that during all this time, as the proof clearly shows, the house of Hitchcock & Endicott was in trouble—in embarrassed circumstances. It did not meet its paper as it fell due; renewals were made from time to time, and when notes and bills would become due to the Traders' Bank, instead of being paid, a new transaction, as the President calls it, was made, by which the loan was extended; in other words, the old note or bill was taken up and a new one given.

So that, in his opinion, in order to obtain the debt due from Hitchcock & Endicott to the bank, strong measures were necessary. Mr. Endicott, it is to be remarked, was absent from the city at that time, and until immediately before the matter was finally closed. Mr. Hitchcock was present, and most of the negotiations and conversations took place between him and the President of the bank. On the 28th of May a suit was commenced by the Traders' Bank against Hitchcock & Endicott, and an affidavit was made for a *capias* against Hitchcock, on the ground of the fraudulent statement, as alleged, that had been made as to the condition of the firm. A summons issued against Endicott, and a *capias* against Hitchcock. As the result of this proceeding, on the 28th of May, in the evening, and under the threat of an arrest of Hitchcock by the Sheriff, he and Endicott, the latter being induced to do so, as he says, in consequence of his belief that he was implicated with Hitchcock, consolidated all the indebtedness then due to the bank in a note, payable on demand, which they signed, and with which they gave a warrant of attorney to confess judgment thereon, and a judgment was accordingly entered on the next day, May 29, 1867, against Hitchcock & Endicott, and execution issued and property was levied on.

On the 30th of May, Hotchkiss' Sons filed their warrant of attorney, and took judgment against Hitchcock & Endicott, and issued execution. The property of Hitchcock & Endicott was sold by the Sheriff under these executions, and the proceeds are in the hands of the Traders' Bank.

It is to be observed that this occurred a few days before the bankrupt law went into effect, as to the filing of petitions: The *proviso* at the end of the law being, "that no petition or other

proceeding under this act shall be filed, received, or commenced before the first day of June, A. D. 1867."

Subsequently, during the month of June, Hitchcock & Endicott filed a petition in bankruptcy, and some of their creditors also filed a petition against them. The former was abandoned, and the case proceeded under the involuntary petition. An injunction was issued from the District Court to prevent the sale of the property, but a sale, as has been already stated, was made by the Sheriff. No application has ever been made to the Court upon the subject, and I suppose it was understood that the controversy was to be settled by a bill in chancery.

This bill has been filed by the assignee of Hitchcock & Endicott to reach the goods of the firm or their proceeds, and the case comes up now under this brief statement of facts.

There are several questions which arise, and which it becomes necessary to decide.

The first is, whether in executing the warrants of attorney authorizing the judgments to be taken against them, Hitchcock & Endicott violated any provision of the bankrupt law.

Secondly—Whether, if so, the Traders' Bank is affected by the action of Hitchcock & Endicott in such a way as to prevent it from availing itself of the money or property thus obtained.

As a part of these, are several minor questions.

First—Were Hitchcock & Endicott insolvent at the time that they executed the note and gave the warrants of attorney to confess judgment?

I have no doubt but they were, in fact, insolvent on the 28th of May, 1867. Their liabilities were between $30,000 and $40,000, and the difference between the assets and liabilities

was such at the time that no candid, intelligent business man could fail, I think, to reach the conclusion that they had not enough to pay their debts. There is no doubt *now* of the fact that they were insolvent. It has not been seriously controverted in the argument. What has been claimed is that Hitchcock & Endicott did not believe that they were insolvent, but thought that they would be able to continue their business and pay their debts.

Without dwelling longer upon the proof in favor of the conclusion that they were actually insolvent, we will proceed now to another question, namely—Whether they, as reasonable and intelligent men, had a right to believe that they were insolvent?

They say that they thought that they would be able to pay their debts. But why did they so think? They have been struggling to pay their debts for months, and had not done it. Bill after bill, and note after note, had matured, and they had not been paid. They had given, early in March, a warrant of attorney authorizing a confession of judgment. They had been before sued; were, on the 28th of May, specially pressed by the Traders' Bank for payment or security of an indebtedness of more than six thousand dollars which they could not meet. Their bookkeeper had absconded, writing word that he had made a mistake of $10,000 in the statement of their condition. As reasonable and intelligent men, what right had they to suppose or believe that they were in a solvent condition? Especially if they complied with the peremptory and threatening demand of the President of the Traders' Bank, and gave a warrant authorizing a confession of judgment with the power to proceed against them at once, upon what ground could they suppose that they would be able to pay their debts? I cannot see, looking at the case as it is presented under the evidence, that there was any

intelligent reason existing from which they could infer that they could pay their debts. I mean in the ordinary course of business; undoubtedly it was possible that some unusual, unforseen, event might occur to enable them to do it, but in the regular course of business, judging by what had taken place for several months past, extrication would seem well nigh impossible. Therefore, looking at their position with that degree of intelligence which every business man is supposed to bring to bear upon the state of his finances in such an emergency, the best that could be said was that they were financially in an extremely critical condition. Certainly the President of the Traders' Bank so thought, if we are to judge by his actions.

They were, then, insolvent. The proof before them of their condition was sufficient to justify any intelligent person in the conclusion that they were so insolvent, and in this state of affairs they were called upon, under the threat of an arrest from their principal creditor, to sign a note and give a warrant of attorney to confess judgment.

Now, what was the motive with which this was done? If they were insolvent, as a matter of fact, and they were called upon in this way to give a note and warrant, with what object was it done? They say it was not to give a preference to the Traders' Bank. The President of the Traders' Bank also says that it was not done for that purpose. But for what other purpose could it be done than to give a preference? It follows as a legal conclusion, I think, from the state of facts then existing, and which facts were known to Hitchcock & Endicott, and from which they must be presumed to draw reasonable and intelligent conclusions, that the giving of this note and warrant of attorney did, in point of fact, operate as a preference.

There is only one possible contingency from which that result could be avoided, namely, that they signed the note and warrant of attorney under the belief that it would not be used as a security against them, and it is not pretended that there was anything of that kind attempted, or any hope to that effect held out to them. Mr. Endicott, it is true, says that he signed the note under the declaration of the counsel of the bank when interrogated as to what would be done with the note and warrant of attorney if signed; that upon that point he had no instructions from the bank. Certainly no intelligent person could infer from such a statement that the warrant of attorney might not be used immediately, and that instructions might not come as soon as the warrant of attorney was signed, as in fact they did.

They were, then, insolvent, and they must have signed the note and the warrant of attorney to give a preference to the Traders' Bank. That was, as I have said, the legal effect of the facts and of what they did. It is to no purpose that a man says, when he is insolvent and signs a note and warrant of attorney, and gives it to his creditors, the effect of which is to enable that creditor to enter up judgment and issue execution and levy on his property, that he did not intend to give a preference. Actions in this, as in so many other cases, speak louder than words, and the conclusion necessarily follows, from such a state of facts, that he does intend to do what is the necessary consequence of what he does, or, according to the oft repeated statement of the books, a man is supposed to know what is the necessary consequence of his own acts.

Then the next question is—Had the President of the bank reasonable ground to believe that Hitchcock & Endicott were insolvent? I think he had.

The language of the 35th and 39th sections of the bankrupt law is substantially that when there is a payment, sale, assignment, transfer or other conveyance made, or a warrant of attorney to confess judgment given by a person who is insolvent, with the intent of creating a preference, and the party to whom it is so given has reasonable ground to believe it, the act by which that preference is sought to be accomplished, shall become nugatory, and whatever money or property has been acquired thereby can be recovered back by the assignee in bankruptcy.

I do not suppose that the President of the bank was guilty of or intended to commit any fraud in fact. His bank had loaned Hitchcock and Endicott a very considerable sum of money; he had become alarmed as to their condition, and desired to put an end to all business transactions between the bank and them, and naturally wished to obtain his debt or security for it as soon as practicable.

But—to recapitulate briefly—his attention had been some time before directed to their pecuniary condition. It had become the subject of inquiry. A mistake had been discovered in the statement made to him, which rendered the margin in their favor so small as in his opinion to justify the greatest anxiety as to the safety of the account.

In fine, his whole conduct evinced alarm, and a suspicion that Hitchcock & Endicott would not be able to pay their debts. And I take it to be a sound rule, that when a person suspects the solvency of his debtor, and in consequence of that suspicion obtains property or money, and thereby a preference, and it turns out in fact that his debtor is insolvent, that he may be said to be in the predicament contemplated by the bankrupt law: he has reasonable ground to believe that his debtor is in-

solvent, and so cannot avail himself of the payment made or the security obtained.

The 39th section of the bankrupt law declares that if any insolvent person shall give any warrant to confess judgment, or procure, or suffer his property to be taken on legal process with intent to give a preference, he shall be deemed to have committed act of bankruptcy.

There remains, then, the question, whether Hitchcock & Endicott, within the meaning of this law, *suffered* their property to be taken on a legal process.

It has been insisted that they were not within these terms of the bankrupt law. I admit that it must be an act of volition on their part; it must be, in other words, something that is done voluntarily. The mind must act freely, not under duress; and the question is, whether Hitchcock & Endicott did, in this case, within the meaning of the law, suffer their property to be taken on legal process. I think they did.

It is true that there was a moral force brought to bear upon them to induce them to sign the note and give the warrant of attorney, but they did it, as they say, because they did not wish to bear the indignity and the injurious effects which might flow from the arrest of one member of the firm. But it was not the less a voluntary act on their part. They, as free agents, signed the note and warrant of attorney. The motives that were brought to bear upon them may have been of more or less stringency, but it was not done under duress. Indeed, the threat of arrest was made upon an ordinary capias in a civil suit, and it does not even appear that the arrest could have been sustained.

Then, being voluntary, did they intend to suffer their property to be taken on legal process? If they did not intend this, what did they intend? For what did they give the note and

sign the warrant of attorney? What possible object could the President of the Traders' Bank have had in demanding the execution of these instruments except to take the property of Hitchcock & Endicott on legal process?

As rational and intelligent men, what other inference could they draw from what had taken place? And, looking at the matter under the operation of these causes, what other conclusion can follow than that they intended to suffer their property to be taken on legal process?

I entirely agree with those courts which declare that the word "suffer" is different from the word "procure." "Suffer" implies a passive condition, so to speak—as to allow or permit—not a demonstrative active course like the word procure. It is the very definition, I think, to apply to the case of pressure and powerful motives brought to bear upon a party. Under the influence of this pressure, and the operation of these motives, he *suffers* a thing to be done—that is, allows or permits—it, and the law intended to prevent this.

Again, it is imposfible to lose sight of the time during which these matters were transacted—the 28th and 29th of May, 1867. The bankrupt law went into operation on the first of June, a few days afterwards, so far as to allow the filing of petitions. The President of the Traders' Bank acted under the influence, as he admits, of the bankrupt law, and of certain views and opinions which he had in relation to it. What was to be done had to be done quickly, or on the first of June these parties or any one of their creditors could file a petition in bankruptcy, and then there was no chance of any preference. So that the inference, I think, derivable from the peculiar juncture at which the transactions took place, is unfavorable to the Traders' Bank, as well as to Hitchcock & Endicott.

The great principle of the bankrupt law—the distribution equally among all the creditors of the property of a man unable to pay his debts—is, I think, attacked in this case by the attempt by which the Traders' Bank sought to obtain a preference. It was natural, perhaps, that the President of the Traders' Bank should seek the payment of the debt; most men, possibly, would have done the same; but, it is not the less true, in my judgment, that such a course of action does interfere with the operation of the bankrupt law and prevent the equal distribution of the assets of this firm to their creditors.

It has been said, and will be said again, that we ought not to prevent or interfere with the ordinary business operations between man and man. That is true, and we do not attempt to do it unless there is something in the transaction indicating that the man who makes it has reason to believe that he is getting what ought to belong to the creditors generally, and if so the bankrupt law declares that he cannot avail himself of money or property thus obtained. But where a man acts without knowlenge of the condition of the party or of anything to create suspicion of his solvency, and in good faith obtains a payment or security, then the bankrupt law will not interfere with it.

I have considered exclusively the relations of Hitchcock & Endicott with the Traders' Bank. The bill will be dismissed as to Hotchkiss' Sons. They are not in court. The facts applicable to that case are somewhat different from those existing in the case of the Traders' Bank. Their warrant of attorney was given on the 5th of March. The condition of Hitchcock & Endicott had not been so completely developed at that time as it was on the 28th and 29th of May. The Sheriff is not a party and is not in court. It is possible that Hotchkiss' Sons might

be compelled to abide the consequences of the action of the court if the Sheriff was in court, on the ground that he represented them, but it is not necessary to decide this point.

As to the Traders' Bank, they have obtained the benefit of an unwarrantable preference; the property has been sold and the money paid over to them; possibly sold at a sacrifice; the proof as to what it was actually worth, perhaps, is not very satisfactory; and although, in many cases, what property may bring at a forced sale is not the true criterion of its value, I feel inclined to take that view of the case in this instance, and to hold that the Traders' Bank is responsible for nothing more than the proceeds of the sale. The property was sold under two executions, that of the Traders' Bank and Hotchkiss' Sons, and the proceeds were more than the execution of the Traders' Bank. There was besides a payment of over $300 made on the debt, of money in the hands of the Traders' Bank, on the 29th of May, and for which a check was given, and there was $900 of money which was levied upon in the hands of the Traders' Bank by the Sheriff at its instance. I think that these incidents will have to follow the principal; that the result of the reasoning which has been stated leads necessarily to the conclusion that the same consequences flow from the payment and levy of these sums, and therefore that they would be included as a part of the amount of damages for which the Traders' Bank would be responsible, and I think the Traders' Bank will be liable, also, for the interest from the time of the receipt of the money. As some incidental questions may arise, perhaps it is better the case shall be referred to a master.

And it was referred accordingly.

SUPREME COURT OF THE UNITED STATES

*December Term, A. D. 1871.*

**Appeal from the Circuit Court of the Northern District of Illinois.**

TRADER'S NATIONAL BANK,
*Appellant.*

vs.

GEORGE W. CAMPBELL,
ASSIGNEE, ETC.,
*Appellee.*

# BRIEF OF MELVILLE W. FULLER,

***In Reply to Appellee's Argument.***

JAMES H. ROBERTS,
*Of Counsel.*

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# Supreme Court of the United States.

DECEMBER TERM, 1871.

THE TRADERS NATIONAL BANK OF CHICAGO.
*Appellant.*

vs.

GEORGE W. CAMPBELL, ASSIGNEE OF HITCHCOCK AND ENDICOTT, BANKRUPTS,
*Appellee.*

## ADDITIONAL BRIEF FOR APPELLEE.

MAY IT PLEASE YOUR HONORS:

The brief for appellant has just reached me, and I therefore beg leave to submit a few remarks in answer thereto.

The points made by appellant seem directed rather to obtain a reversal on technical grounds than to establish any error committed on the merits. But such as they are, they will not stand the test of an examination.

It is argued:

*First.* That the proper parties were not before the Court.

*Second.* That the assignee should have gone into the State Court.

*Third.* That the decree is erroneous because (it is claimed) the proof shows that the bank has never received from the sheriff satisfaction of its judgment.

*Fourth.* That the decree was for too large an amount.

These positions are all founded, as it seems to me, upon a misconception of the relief sought in the suit and accorded by the decree.

## I.

The first point made is that the proper parties were not before the Court.

In the case of *Shields v. Barrow*, 17 *Howard*, 141, cited for appellant, the subject of parties receives, as is remarked by Mr. Justice *Miller* in *Barney v. Baltimore City*, 6 *Wallace*, 284, "a very able and satisfactory dis-

cussion," and the rule announced is, that although there may be persons whose relations to the suit are such that they should be made parties if within the jurisdiction; yet if their presence is not an absolute necessity, but the case can be completely decided between the parties litigant without affecting the rights of those beyond the jurisdiction, the Court "*will proceed to administer such relief as may be in its power, between the parties before it.*" 6 *Wallace*, 284.

The question is, therefore, (assuming that appellant is in a position to raise it) whether the presence of Hotchkiss' Sons was such a necessity that the Court could not proceed without their being brought in?

This depends upon the nature of the relief sought, the case made, and the decree rendered.

Under the 35th section of the Bankrupt Act, the assignee in bankruptcy may recover property or the value of it, conveyed, transferred, seized or paid over in fraud of the Bankrupt Act from the person receiving such conveyance, transfer, etc., or to be benefited thereby, under the circumstances named in the section. Similarly under the 39th section, the assignee may recover back the money or other property paid, sold, conveyed, etc., contrary to the act.

The case at bar is a bill in equity filed by the assignee in the District Court of the United States, against the Traders' National Bank, to recover *the value of certain goods and chattels seized and sold*, and certain monies levied

on and taken on execution in favor of the bank, in contravention of the 35th and 39th sections of the Bankrupt Act, and also to recover back a certain payment made by the bankrupts to the bank in fraud of the law.

The bill also counted against Hotchkiss Sons, a non-resident corporation, made a party defendant to come in if it chose to do so, and claimed against this defendant that it had also, subsequently to the proceedings of the Traders' Bank, obtained judgment and execution against the bankrupts, in fraud of the law, and that it was also liable to respond to the assignee for all property seized upon that execution.

Upon the hearing, the bill was dismissed as to Hotchkiss Sons, not "voluntarily" by complainant as intimated by counsel, but by the learned Judge of the District Court, because no service had been had upon it, and the decree rendered was wholly directed against the Traders' Bank, leaving the question of the liability of Hotchkiss Sons undetermined.

It is perfectly plain that a valid decree *could* be rendered against the bank alone, without in the slightest degree affecting the interests of Hotchkiss Sons, which were very far from being bound up with those of the bank.

So that the objection of want of parties merely, as such can not be urged, but the decree must be shown to have been erroneous as to the amount found against the bank, another and a different question. And as no such point

has heretofore been urged, and no exception taken in that particular, it would seem too late to raise it now. A few words will show, however, that it would have had nothing to rest upon had it been suggested at the appropriate time.

It is said that the goods were levied on and sold on *two* executions, one of them in favor of Hotchkiss Sons.

But the evidence shows that no sale would have taken place on the Hotchkiss execution, had it not been for the other and larger one in the bank's favor, but that the entire property being advertised on the bank's writ, the junior writ was also held by the sheriff to absorb the surplus.

This is immaterial, however, for, if true, the question to be determined in this case would then, at the best for the bank, be simply for what *proportion* of the value the bank would be liable, and as the decree assumed, as the measure of damage, an amount equal to the face of the judgment, which, deducting $929.38 realized in money, would be about $5,500, and as the goods were shown (Printed record, p. 60) to have been worth at least $21,500, it is clear that the bank has no reason to complain of the amount.

If the judgment and execution in favor of Hotchkiss Sons were void under the bankrupt law, both defendants were liable, but that has properly been left undetermined.

If the judgment and execution in favor of Hotchkiss Sons were valid, all that it was or is requisite for

Hotchkiss Sons to do, is to present their lien to the United States Court sitting in bankruptcy, and receive the full amount from the assets of the bankrupts.

If this judgment and execution is a first lien upon the money realized from the sale, Hotchkiss Sons can assert and maintain such lien without difficulty after the funds have reached the assignee.

Hotchkiss Sons cannot obtain of the State Court a rule on the sheriff to pay their judgment in full, because the judgment and execution in favor of the bank have never been *set aside* in the State Court, nor in any other court. That the United States Court has held that judgment to have constituted a fraudulent preference, is a matter of which the State Court can take no judicial cognizance.

Certainly the bank cannot be heard here to urge that its own judgment is void, and that, therefore, Hotchkiss Sons could take such a rule on the sheriff.

That the sheriff could not plead this decree as against Hotchkiss Sons is most true, for to do that would be to admit that Hotchkiss Sons had a claim on him.

Hotchkiss Sons cannot avail itself of this decree as against the sheriff, because neither Hotchkiss Sons nor the sheriff were parties thereto.

I submit that the effect of the decree is wholly misapprehended, because the decree itself is. That decree is for the recovery of an amount made up of three items.

*First:* A fraudulent payment. Hotchkiss Sons are not concerned in this.

*Second:* Certain money levied on in two parcels under the bank's execution, to wit, $764.38, June 12, 1867, and $165 on July 1, 1867. (*Printed record*, p. 61.)

With this Hotchkiss Sons have nothing to do. If its execution were a lien thereon, it expired long before this action was brought, and the State Court at least can afford no remedy.

*Third:* So much of *the value* of the goods as the court thought the bank ought to be held responsible for.

The court in its recitals in the interlocutory decree (printed record, p. 46) finds that the money for the goods sold on the bank's execution, had been paid over to the bank by the sheriff, but the adjudging part of the decree is for the recovery of an amount "*equal to the amount of said judgment*," etc., which shows that that judgment was taken as a measure of damage merely.

But regard the case in the other aspect. If it be true that the money *had been* paid over, the complainant is entitled to it, and if Hotchkiss Sons have a valid lien thereon, nothing in the decree estops Hotchkiss Sons from maintaining such lien, nor on the other hand, does the decree enable Hotchkiss Sons to attack the sheriff. The rights of the sheriff and of Hotchkiss Sons are left absolutely unchanged by the decree.

In order to obtain anything further or other than the money over and above the bank's execution, Hotchkiss Sons would be obliged to file a bill to set aside the bank's judgment, and the assignee would be a necessary party to such suit, whereupon the question of lien or no lien would be legitimately raised as to Hotchkiss Sons, a question that they might have raised by cross-bill in this very case.

If the recovery is as I assert for so much of the value as the court thought the bank should be held for, then, of course, the objection under consideration has no bearing whatever.

## II.

The second point is that the assignee should have gone into the State Court and applied for an order to pay the money over.

This point is made under manifest misapprehension.

A plea to the jurisdiction, and a reiteration of the same objection in the answer were also tendered and made under a like error.

There is no jurisdictional question of the kind raised upon the record. The bill is a bill, as before stated, to recover under the 35th and 39th sections, money and property received in payment, and seized on execution in fraud of the bankrupt act.

The assignee in bankruptcy was entitled to sue in the United States Court under the act, and the question of the relations between the Federal and State Courts does not arise.

The case of *Smith v. Mason assignee*, 4 *Chi. Leg. News. No.* 10, has reference solely to proceedings by the District Court in a summary way upon petition to show cause.

This is not such a proceeding, but a cause regularly instituted for the recovery permitted under the 35th and 39th sections.

It is a case, as I have said, for the recovery of money received by the deft. bank in *fraudulent payment*, (viz., $325.20) and for the value of certain goods and the amount of certain moneys sequestered from the assets of the bankrupt under an execution in fraud of the law, and for which the deft. bank as the party to be benefited, and as the person in whose favor the seizure is made, is made directly liable.

The order in the District Court restraining the sheriff from selling, was not an order *in this suit.* It was an order granted upon an *ex parte* petition under section 40 of the act. Such restraint is temporary only and intended to preserve the *status quo* until an assignee can be appointed and a bill filed for the proper adjudication of the questions at issue.

As the sheriff sold in defiance of the order, it cuts no

particular figure, and authorities are certainly inapplicable in reference to it.

Repeated decisions have however, sustained such orders as against parties litigant in State Courts, sheriffs, landlords, etc. etc.

*Pennington* v. *Sale et al*, 1 *B. Reg.*, 157.
*In re Wallace*, 2 *B. R.* 52.
*In re People's Mail S. Co.*, 3 *Ben.*, 226.
*In re Wynne*, 9 *A. L. Reg.*, 627.
*In re Kerosene Oil Co.*, 6 *Blatch.*, 521.
*Hill* v. *Fleming*, 39 *Geo.*, 662.
*Irving* v. *Hughes*, 7 *A. L. Reg.*, 209.
*In re Schnepff*, 2 *Ben.*, 72.

But this question does not arise, and it is unnecessary to discuss it.

III.

*Appellant's third point* is that the decree is erroneous because, it is claimed, the proof shows the bank never received from the sheriff any amount whatever in satisfaction of its judgment.

The answer to this is two-fold.

*First.* If the bank had not actually received the money, it would make no difference.

So far as the goods and chattels taken on execution are concerned, or the money either, the bank is liable for the

value, whether it has been received from the sheriff or not. It has had, ever since the sale, and has to-day, the power to go into the State Court and get the money. It can not hold on to its judgment as it has done, and insist that it is a valid lien, and at the same time make *its own act in declining to take the proceeds*, a defense in an action for the value. That would be to compel the assignee to sue the sheriff for the specific proceeds, and *limit his recovery to the proceeds*, whereas, he is entitled *to recover the value*, irrespective of what the preferred creditor obtained, and which has nothing to do with the *right* of recovery, although the bankruptcy courts may, if they choose, assume the amount realized in gross or in net, as the measure of recovery.

It is easy to see what a door to fraud would be opened if this were not the rule, and hence the law also wisely declares that recovery may be had against the party "*to be benefited*" *by the transaction.*

This puts the point beyond question.

*Second.* But the bank *did* receive the proceeds from its execution.

It received those proceeds in effect when the sale was concluded.

Its execution was by the levy and sale *satisfied.* Whether the situation could have been changed by a voluntary surrender is not now essential to be examined.

The writ is *functus officio*, and should long since have been returned satisfied.

It was the sheriff's duty to make return, and pay over the proceeds. If he has not done so, the remedy is clear, adequate and complete.

The evidence leaves no doubt that the money has come to the hands of the bank. It is true the bank gave the sheriff a certificate of deposit for the amount, but that makes no difference. As between the sheriff and the bank, the former can not recall the money so deposited which as between them belongs to the latter. The agreement is stated by the cashier of the bank (Printed record, p. 48,) to have been that if the bank lost the suit the money was "to abide the order of the court in the premises." The bank *did* lose the suit, and under such an agreement can apply the money on the decree. But no such stipulations can avail as against the assignee. He is no party to them, and can not be constrained by anything others may agree to *inter sese* from pursuing the remedies accorded by the law.

Nor are the rights of Hotchkiss Sons or the sheriff affected by the decree as has already been seen. What the bank and the sheriff may do as to the certificate of deposit is matter of their own concern.

And as to Hotchkiss Sons, if they have any lien at all, they can enforce it in bankruptcy, or by bill to set aside the bank's judgment as to them, and to which the assignee would be a necessary party.

But the liability of the bank to the complainant is unchanged by these considerations. To permit such arrangements to thwart the course of justice is to encourage instead of to repress fraud.

It is again insisted that the assignee should have gone into the State court, and *Rohrer's Appeal*, 62 Penn., 498, is cited.

I have not seen that case, but the question must have arisen where the property had been sold *before* the bankruptcy proceedings were commenced. And be that as it may, it certainly can not have been decided that the assignee is under any circumstances deprived of the right to sue under the 35th and 39th sections.

It is claimed that this decree results in great injustice and wrong, because, as it is said, the bank has to pay $7,903.12, when it has only received $325.20.

I am unable to concur with counsel. The amount of the decree without interest is but $6,763.43, the increased amount being attributable to the addition of interest. In the meantime the bank has been making interest on the entire amount, according to its own showing, and at a rate in excess of six per cent., to say the least of it. Nor is the bank under any circumstances liable to Hotchkiss Sons, whose judgment if void would give no rights against anybody, and if valid will be satisfied out of the balance in the sheriff's hands, and by the assignee upon proper application. In the State court, as matters stand,

it is absolutely certain that Hotchkiss Sons can get no more than the surplus left with the sheriff.

## IV.

*The fourth point* is that the decree is too large.

It is supposed that Section 20 of the Bankrupt Act relating to the set-off of mutual debts or credits, has application.

It is perhaps sufficient to dispose of this point, to call the attention of the court to the fact that the answer does not claim the benefit of any such set-off.

As it is said, however, that the defendant was entitled to a "banker's lien," the question will be examined on its merits.

The argument is that as to the sum of $325.20, indorsed upon the judgment note prior to the entry of the judgment, and the money turned out by the bank upon its own execution (being $764.38, June 12, 1867, and $165, July 1, 1867), the bank had a right to apply these upon the indebtedness in virtue of the relations between it and the bankrupts, and therefore the decree is to this extent too large.

If the bank, instead of undertaking to obtain a fraudulent preference by procuring the judgment note for $6,607.43, May 28, 1867, including therein the notes of the bankrupts held by the bank, whether matured or not,

the country drafts, and every kind of liability, had made no such attempt, but had stood merely upon its rights as matters were, then the point presented might be made with better grace, but the transaction, as it was, prevents any concession to the afterthoughts of the bank's counsel, and requires the claims of that institution to stand or fall, as that transaction is adjudged to have been legal or illegal.

The payment of the $325.20 upon the fraudulent note itself, and the turning out of the other money upon the execution issued on the judgment on that note, are so "morticed and adjoined" to the operation of the bank in fraud of the law, that they necessarily attend the ruin of the latter.

Let us take a little closer grip upon the facts.

Upon the 28th day of May, A. D. 1867, the bank held Hitchcock & Endicott's notes, as follows: One for $1,000, due June 19; one for $1,500, due June 10; one for $1,500, due July 22; one for $500, due May 26.

All these were renewals, as the answer of the President to X Int., 35 (Printed record, p. 86) shows, and but *one* of them, namely, one for $500, was then due.

There was $325.20 to the credit of Hitchcock & Endicott on the books of the bank on that day. This sum the bank did not appropriate, nor claim to appropriate, upon any of the paper above named, by virtue of a lien or otherwise.

In addition to these notes, the bank held small drafts of Hitchcock & Endicott on their country customers, amounting to $2,207, the majority and perhaps all of which had been taken in May, 1867. (Printed record, p. 83.)

The bank subsequently obtained, June 12 and July 1, $943.23 on these drafts, which it did not appropriate or claim to appropriate upon the drafts nor upon its judgment by virtue of any lien, set off or otherwise, but which turned over to the sheriff to be levied upon by him on the execution in the bank's favor, and this was done.

On the same 28th day of May, the bank, for the purpose of securing a preference, pronounced fraudulent by the law, and for the purpose of avoiding the operation of the bankrupt act, *which was fraudulent in fact*, (printed record, p. 91) obtained the judgment note in question for $6,707, including therein the notes which amounted to $4,500, and the country drafts which amounted to $2,207. Thus the bank embodied all its claims in this one judgment note, which it insisted was a valid one but which the law and the courts pronounced fraudulent. The original notes and claims had become merged, and while I do not now argue that the bank might not have withdrawn from the position it occupied, by a timely surrender of its illegal preference, it is sufficient to remark that it has never done so.

On the morning of the 29th day of May, 1867, the sum of $325.20 was indorsed upon the note and judgment

taken for the balance. The bank could not then have appropriated this sum on that note by virtue of any lien, set-off or otherwise, for the note was fraudulent, but it did not pretend to do so. On the contrary, the amount was paid to it *by the check of Hitchcock & Endicott*, given by Endicott, whose brother was a director in the bank and who seems to have done whatever the bank required.

Hitchcock says (printed record, page 53): "There was a balance in the bank at the time of giving this note. Mr. Endicott, the partner, gave a check for it. It was about $300." Endicott does not deny but substantially admits this. (Printed record, p. 108, X Int. 37, X Int. 38.)

On the 12th of June and 1st of July the amounts received on the country drafts were turned out by the bank upon its own execution.

We perceive, then, that neither the payment nor the money collected were appropriated by the bank upon the principle of lien, or set-off, and this seems to dispose of the point under consideration.

The question does not, however, really arise. If the bank surrendered its preference, and had come into the bankruptcy court seeking to prove up its claim, and then claimed to retain the sums of money herein treated of, the question would then be presented; but the bank did nothing of the kind. It resisted, and still resists, any recovery by the assignee. It claimed, and still claims, its preference to have been lawful.

It can not now and here come with unclean hands, and seek relief as to a part of the indebtedness, when the whole is tainted with a fraud which it strenuously denies.

Under the 23d section of the bankrupt act, parties guilty of *constructive* fraud only are permitted to prove upon a surrender of the unlawful preference. And in the cases *In re Tonkin and Trewartha*, 4 B. R. 13, and *In re Richter's Estate*, 4 B. R., 67, it was ruled that such surrender can not be had after recovery of judgment by the assignee. In the cases, *In re Davidson*, 3 B. R., 106; *In re Montgomery*, 3 B. R., 107, and *In re Scott and McCarty*, 4 B. R., 139, it was decided that the creditor who *claims to retain* the property makes himself *conclusively* a party to the fraud by resisting the claims of the assignee to recover, if the assignee is successful. In the cases *In re Princeton*, 1 B. R., 178; *In re J. C. and C. W. Walton*, 4 B. R., 154, and *In re Colman*, 2 B. R., 172, it was announced that a creditor having reasonable cause to believe the debtor to be insolvent, and accepting a preference, will not be allowed to relinquish that intended preference, and prove his claim under the 23d or any other section of the act, in a case of involuntary bankruptcy.

In *Babbit* v. *Walburn & Co.*, 4 B. R., 30, it was held that sections 23 and 39 are reconcilable by confining the latter to cases of *actual* as contradistinguished from *constructive* frauds.

In the case at bar, however, there has never been the slightest movement towards a surrender, so the particular question is not involved.

I insist moreover that this is the case of actual fraud upon the admission of the president himself.

V.

As to the merits of the controversy, and any other questions I can conjecture might possibly be raised, I refer to the brief hereinbefore filed on behalf of the appellee, and the opinion of Judge Drummond thereto appended.

This case was argued in the District Court before Judge Drummond, and on appeal, in the Circuit Court before Mr. Justice Davis, and received the careful consideration of both those magistrates.

I am unaware of any reason in law founded upon the facts as they exist, which militates against the conclusions arrived at.

Respectfully submitted.

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Bill against the Bank
& Holyoke Coll —